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# **Insurance & Banking Subcommittee**

**Wednesday, December 2, 2015**

**11:30 AM**

**Sumner Hall (404 HOB)**

**MEETING PACKET**

**Steve Crisafulli**  
**Speaker**

**John Wood**  
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Insurance & Banking Subcommittee

**Start Date and Time:** Wednesday, December 02, 2015 11:30 am  
**End Date and Time:** Wednesday, December 02, 2015 01:30 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 577 Liability Insurance Coverage by Lee  
HB 695 Title Insurance by Boyd  
HB 699 Reciprocal Insurers by Grant

**Consideration of the following proposed committee substitute(s):**

PCS for HB 473 -- Funeral, Cemetery, and Consumer Services

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, December 1, 2015.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, December 1, 2015.

**NOTICE FINALIZED on 11/24/2015 4:06PM by McCloskey.Michele**



# **The Florida House of Representatives**

**Regulatory Affairs Committee**

**Insurance & Banking Subcommittee**

**Steve Crisafulli**  
**Speaker**

**John Wood**  
**Chair**

## **AGENDA**

**December 2, 2015**  
**404 House Office Building**  
**11:30 AM – 1:30 PM**

- I. Prayer and Pledge of Allegiance**
- II. Call to Order & Roll Call**
- III. Consideration of the following bill(s):**
  - A. PCS for HB 473 Funeral, Cemetery, and Consumer Services by Insurance & Banking Subcommittee
  - B. HB 577 Liability Insurance Coverage by Lee
  - C. HB 695 Title Insurance by Boyd
  - D. HB 699 Reciprocal Insurers by Grant
- IV. Adjournment**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 473 Funeral, Cemetery, and Consumer Services  
**SPONSOR(S):** Insurance & Banking Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 854

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Bauer <i>JB</i>	Luczynski <i>NJ</i>

### SUMMARY ANALYSIS

Chapter 497, F.S., entitled the Florida Funeral, Cemetery, and Consumer Services Act (Act), provides for the regulatory oversight of the death care industry, which includes individual and entity licenses for cemetery companies, embalmers, direct disposers, funeral directors, preneed, and others. The Act is administered jointly by the Division of Funeral, Cemetery, & Consumer Services of the Department of Financial Services (DFS) and the Board of Funeral, Cemetery & Funeral Services (Board) as coexisting "licensing authorities."

The PCS makes the following changes throughout the Act:

- Creates a unitrust method as an alternative to the current net income approach for care and maintenance trusts required of cemetery companies, and creates definitions, requirements, and procedures for election, modification, and Board approval of a cemetery company's election to use the unitrust method;
- Repeals surety bonding and letters of credit as alternative forms of security for the performance of preneed contracts, and eliminates references to these alternative options throughout the Act;
- Creates definitions of "purchaser" and "beneficiary" for preneed contracts;
- Repeals a preneed licensure exemption for certain servicing agents;
- Authorizes DFS to require email addresses from applicants and licensees for purposes of electronic notifications for official communications;
- Ensures consistent use of the defined term "legally authorized person" throughout the Act;
- Clarifies that cremated remains are not property for purposes of probate, and that division of such remains require the legally authorized person's consent;
- Permits cemetery companies to charge over \$50 for each burial rights transfer, but subject to Board rule and findings;
- Requires applicants for the embalmer apprentice program to demonstrate good character, which is currently required of other licenses under the Act;
- Clarifies the scope of funeral directing;
- Requires cemetery companies to remit unexpended monies paid on irrevocable preneed contracts to the Agency Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary's final disposition;
- Clarifies the deposit duties of preneed licensees prior to becoming inactive;
- Updates various financial and trust-related terms throughout the Act; and
- Provides specific rulemaking authority for several existing rules and provides new rulemaking authority to administer the unitrust method

The PCS may have a positive fiscal impact on state government by reducing some operational costs to DFS and by requiring industry to remit unused irrevocable preneed contract funds to AHCA. The PCS does not have a fiscal impact on local governments. The fiscal impact to the private sector is indeterminate, in that the PCS requires annual reporting from trustees of preneed contract funds, but the unitrust method could provide greater long-term returns for cemetery licensees' care and maintenance trusts.

The PCS has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapter 497, F.S., entitled the Florida Funeral, Cemetery, and Consumer Services Act (Act), provides for the regulatory oversight of the death care industry, which includes the following individual and entity licenses:<sup>1</sup>

- Brokers of burial rights
- Cemeteries
- Central embalming facilities
- Cinerator facilities
- Direct disposer and direct disposal establishments
- Embalmers (including apprentices, interns, and by endorsement)
- Funeral directors and funeral establishments
- Preneed, preneed branches, and preneed sales agents
- Monument establishments and monument establishment sales agents
- Refrigeration facilities
- Removal services
- Training facilities

The Act is administered jointly by the Division of Funeral, Cemetery, & Consumer Services of the Department of Financial Services (“DFS” or “Division”) and the Board of Funeral, Cemetery & Funeral Services (“Board”).

##### **Effect of the Proposed Committee Substitute (PCS)**

The PCS amends a number of provisions of the Act:

##### ***E-mail Notifications***

As required by the Act, DFS administers a licensing system to process and track applications, renewals, and fees; DFS is authorized to require specified information in its application forms, such as the applicant’s work history, criminal history, and business plans. Currently, application forms adopted by rule require the e-mail address of the applicant or licensee as a means of correspondence for DFS.<sup>2</sup>

Sections 2, 3, and 6 of the PCS amend ss. 497.141, 497.146, and 497.264, F.S., respectively, to codify the Division’s practice of requiring applicants’ and licensees’ email addresses.

##### ***Legally Authorized Persons & the Disposition of Human Remains***

Currently, the Act sets forth the order or priority of persons (“legally authorized persons”) who are authorized to direct the disposition of human remains. The “legally authorized person” concept is similar to the Probate Code’s order of preference in appointing a personal representative over an estate.<sup>3</sup> The Act sets the priority of legally authorized persons<sup>4</sup> as:

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<sup>1</sup> DFS DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, *Who We Regulate: Regulated Categories & Number of Licensees*, <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last viewed Nov. 20, 2015).

<sup>2</sup> s. 497.141(2) and (11), F.S. See DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, *Applications*, at <http://www.myfloridacfo.com/Division/funeralcemetery/Licensing/LicensingApplications.htm> (last viewed Nov. 20, 2015).

<sup>3</sup> s. 733.301, F.S.

- (1) A written *inter vivos*<sup>5</sup> authorization made by the deceased,
- (2) The person designated by the decedent as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while serving military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard.
- (3) The surviving spouse;
- (4) A son or daughter of majority age;
- (5) A parent;
- (6) A sibling of majority age;
- (7) A grandchild of majority age;
- (8) A grandparent; or
- (9) Another person in the next degree of kinship.

However, current usage of the term throughout the Act is inconsistent, leading to concerns of uncertainty and potential disputes among heirs regarding the disposition of human remains. Such disputes can also involve funeral homes and other licensees under the Act, because they receive, store, and process the remains, and are sometimes sued by the relative whose wishes regarding final disposition did not prevail.<sup>6</sup>

The PCS amends several provisions throughout the Act to ensure consistent usage of the term “legally authorized person”:

- Section 4 – s. 497.152, F.S., which subjects a licensee to disciplinary action by DFS for various acts, including refusing to surrender custody of a dead human body, failing to obtain written permission regarding disposition of funeral merchandise, and making material misrepresentations regarding a preneed contract. The PCS clarifies that these acts or omissions directed to legally authorized persons are grounds for disciplinary action.
- Section 12 – s. 497.273(4)(b), F.S., regarding the authorization to inter or entomb cremated animal remains with an inurned.
- Section 13 – s. 497.274(1), F.S., regarding the authority to waive the minimum standard adult grave space.
- Section 16 – s. 497.286(3), F.S., regarding the names of certain persons contained in a cemetery's notice to DFS of presumptively abandoned burial rights.
- Section 19 – s. 497.381(4), F.S., regarding the prohibition of solicitation of goods and services by funeral directors and direct disposers to legally authorized persons or family.<sup>7</sup>
- Section 25 – s. 497.460, F.S., regarding the disbursement of funds paid on defaulted or unperformed preneed contracts.
- Section 31 – s. 497.601(1), F.S., regarding the scope of permissible activities of licensed direct disposers, including securing pertinent information to complete disposition and the death certificate.
- Section 32 – s. 497.607(1), F.S., regarding authorization for cremation services. In addition to clarifying the “legally authorized person” declaration of intent in subsection 1, the PCS creates subsection (2) to s. 497.607, F.S., to state that cremated remains are not property for purposes of s. 731.201(32), F.S.<sup>8</sup>, and a division of such remains requires the consent of the legally

<sup>4</sup> s. 497.005(39), F.S. The definition also addresses legally authorized persons when no family member exists or is available.

<sup>5</sup> An *inter vivos* authorization is one made during the life of the deceased; “between the living; from one living person to another.” See BLACK’S LAW DICTIONARY, <http://thelawdictionary.org/inter-vivos/> (last viewed Nov. 25, 2015).

<sup>6</sup> Florida Department of Financial Services, Agency Analysis of 2016 House Bill 473, p. 2 (Nov. 23, 2015).

<sup>7</sup> The DFS noted that notwithstanding this provision, monument establishments and any other ch. 497-licensed entity should be able to contact the legally authorized person or family of the decedent, once 30 days have passed from the date of death, to offer for sale grave markers or monuments. DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, p. 16 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff.

<sup>8</sup> Section 731.201(32), F.S., is the definition of “property” for purposes of the Florida Probate Code, and means both real and personal property or any interest in it and anything that may be the subject of ownership. By excluding cremated remains from probate property, the PCS ensures that the disposition of cremated remains is subject to the order of priority of legally authorized persons.

authorized person approving the cremation, or if the legally authorized person is the decedent, the next available legally authorized person. The PCS provides that a dispute regarding the division of cremated remains shall be resolved by a court of competent jurisdiction.

### ***Burial Fees***

A burial right is the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the interment, entombment, inurnment, or other disposition of human remains or cremated remains.<sup>9</sup> While cemetery companies may collect fees for the sale of burial rights, merchandise, or services, they may only charge certain fees for the *use* of any burial right, merchandise, or service, such as sales tax and any interest on unpaid balances. Another permissible fee is the cost of transferring burial rights from one purchaser to another, which current law caps at \$50. The price cap has not been adjusted since the inception of this statute in 1993.

Section 14 of the PCS amends s. 497.277, F.S., to permit the cost of transferring burial rights to exceed \$50, but subject to Board rule and based on the Board's findings of average administrative costs to a cemetery of transferring such burial right.

### ***Sale of Personal Property or Services by Cemetery Companies***

Currently, s. 497.283, F.S., requires cemetery companies that sell personal property or services in connection with burial or commemorative services to deliver such goods or to perform such services within 120 days of receiving final payment, except for preneed contracts. "Delivery" of goods means actual delivery and installation at the time of need or at the request of the owner or owner's agent. However, subsection (2)(c) provides an alternative delivery method only for manufacturers of outer burial receptacles (OBC) who sell to cemetery companies and funeral establishments if they show evidence of "financial responsibility" as set forth in the "standards and procedures" in s. 497.461, F.S. (relating to surety bonding as an alternative to trust deposit for preneed licensees).

According to DFS, the alternative delivery method's reference to s. 497.461, F.S., as a source of standards and procedures for OBC manufacturers is unclear and unnecessary. The Division is not aware of any applicable standards or procedures in s. 497.461, F.S. Additionally, this alternative delivery method is not currently used by any manufacturer, and the Division has no record of any manufacturer ever seeking to use the alternative offered in s. 497.283(2)(c), F.S., or the applicable rule.<sup>10</sup> Accordingly, section 15 of the PCS deletes the alternative delivery provision in s. 497.283(2)(c), F.S.

### ***Applicants for the Embalmer Apprenticeship Program***

Applicants for the following licenses under the Act require demonstration of good character:

- Cemetery companies - s. 497.263(2)(p), F.S.
- Brokers of burial rights - s. 497.281(2)(d), F.S.
- Embalmers and embalmers by endorsement - ss. 497.368(1)(c) and 497.369(1)(d), F.S.
- Funeral directors and funeral director by endorsement - ss. 497.373(1)(c) and 497.374(1)(d), F.S.
- Funeral establishments - s. 497.380(4), F.S.

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<sup>9</sup> s. 497.005(7), F.S.

<sup>10</sup> DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, p. 14 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff. According to the Division, the applicable rule is 69K-7.0125, F.A.C. Section 497.283, F.S., is the only necessary authority for the rule. The only provision of 497.161, F.S., which is referred to in the rule, is 497.461(12), F.S., which reads as follows: "(12) *In lieu of the surety bond, the licensing authority may provide by rule for other forms of security or insurance.*"

- Removal services, refrigeration services, and centralized embalming facilities - s. 497.385(1)(a) and (2)(f), F.S.
- Preneed licensees - s. 497.453(2)(f), F.S.
- Direct disposers and direct disposal establishments - ss. 497.602(3)(f) and 497.604(3)(c), F.S.
- Cinerator facilities - s. 497.606(3)(d), F.S.

However, no such requirement currently exists for applicants for the embalmer apprentice program. Section 17 of the PCS amends s. 497.371, F.S., to provide that DFS may not issue a license to an applicant for the embalmer license program, unless it determines that he or she is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

### ***Scope of Funeral Directing***

The Act sets forth the scope of the practice of funeral directing which may be performed only by a licensed funeral director. Currently, one of the permitted acts is planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains with the decedent's family, friends, or other person responsible for such services.

Section 18 of the PCS amends s. 497.372(1)(b), F.S., to remove the language stating that such services be performed "with the family or friends of the decedent or any other person responsible for such services." This language is being removed to avoid possible conflict with "legally authorized persons."

### ***Cemetery Companies - Care & Maintenance Trusts***

Cemetery companies that own or control cemetery lands and property are required by the Act to ensure that the grounds, structures and improvements of a cemetery are well cared for and maintained in a proper condition.<sup>11</sup> To achieve this, the Act requires cemetery companies to establish "care and maintenance (C&M) trust funds" with state or national trust companies or banks or savings and loan associations with trust powers.<sup>12</sup> In other states, these trusts are commonly known as "perpetual care trusts." Cemetery companies are required to set aside and deposit specified amounts from the sales of burial rights into their care and maintenance trust funds.

### ***Net Income Trusts vs. Total Return Unitrusts***

Since 1959, the Act has required the *net income* of these trust funds may only be used for the care and maintenance of the cemetery and monuments (excluding the cleaning, refinishing, repairing or replacement of monuments) and reasonable costs of administering care, maintenance, and the trust fund. This net income approach is how cemetery licensees can determine how much may be withdrawn and paid to them every year from the C&M trust fund. While the Act does not define "net income," it has been understood to include only cash received by the trust as interest or dividends from trust investments, not capital gains (which are treated as accretions to principal, not income). This view has been largely informed by trust practices codified in other parts of Florida law.<sup>13</sup> As such, cemetery owners have an economic incentive to invest their C&M trust funds to maximize payments of current interest or cash dividends (e.g., government securities and corporate bonds), as opposed to investing in items that provide capital appreciation (e.g., corporate stocks). This approach typically results in

<sup>11</sup> s. 497.262, F.S.

<sup>12</sup> The appointments of these institutional trustees are subject to the approval of the licensing authority. These trustees are subject to investment limitations and annual financial reporting requirements in the Act.

<sup>13</sup> DFS DIVISION OF FUNERAL, CEMETERY, AND CONSUMER SERVICES, *Unitrust Concept for Cemetery Care & Maintenance Trust Funds: Background and Analysis* ("DFS Unitrust Analysis"), p. 3 (Nov. 18, 2015), on file with the Insurance & Banking Subcommittee staff.

erosion of trust principal as a result of inflation and may negatively affect the trust's long-term growth. Currently, the Act does not expressly dictate the relative mix of income-producing versus capital appreciation investments for C&M trusts, but only speaks to permissible investments that are also allowable for the State Board of Administration (SBA).<sup>14</sup>

Another type of trust, known as the "total return trust," has attracted some interest among trust practitioners for C&M or perpetual care funds. As the name implies, the total return trust allows the trustee to focus on the total return, and to maximize growth of both income and principal by accounting for both income and capital appreciation. One type of total return trust is the unitrust. With the unitrust, the trustee distributes a percentage of the trust based on the fair market value of its assets, regardless of income earned or the original amount invested in the trust. As opposed to withdrawing only income, the unitrust allows cemeteries to withdraw a percentage, no less than 3 percent and no more than 5 percent, of the total fair market value of the trust for annual care and maintenance. Typically, a unitrust:

- Produces a return of 2 to 4 percent greater than an income trust,
- Allows cemetery operators to receive larger distributions (on average and over time),
- Grows principal at a greater rate than an income trust, and
- Shows exactly how much funds will be available for withdrawal in advance, which is important for budgeting purposes.<sup>15</sup>

According to the Division, the unitrust concept as applied to cemetery C&M trusts has only been fairly recently approved for use in 3 states (Iowa, Missouri, and Tennessee).<sup>16</sup>

The PCS amends the Act to accommodate unitrusts as an alternative option to the current net income approach for C&M trusts.

- *Terminology Updates:* Sections 7 and 8 of the PCS update financial and trust terms in existing C&M trust statutes.
  - Section 7 of the PCS amends s. 497.266, F.S., to substitute "assets" for "corpus" and provides that withdrawals and transfers of such assets must be in accordance with the new C&M distribution statute, s. 497.2675, F.S. Additionally, the PCS provides that the trustee may distribute "withdrawals" from the trust instead of "principal and income."
  - Section 8 of the PCS amends s. 497.267, F.S., to substitute "withdrawals" from the C&M trust fund instead of "income."
- *Distributions from C&M Trusts/New Unitrust Option:* Section 9 of the PCS creates s. 497.2675, F.S., as a comprehensive C&M trust distribution statute, which:
  - Create definitions relating to the unitrust option:
    - Average fair market value,
    - Capital gain or capital loss,
    - Ordinary income,
    - Net ordinary income of the trust,
    - Net ordinary income trust distribution method,
    - Fair market value,
    - Income,
    - Unitrust amount and unitrust distribution,
    - Unitrust distribution percentage, and
    - Unitrust distribution method.

<sup>14</sup> *Id.* See ss. 497.266(4) and 497.458(5)(a), F.S., and permissible investment statute for the SBA, s. 215.47(1), F.S.

<sup>15</sup> Lauren Moore, *Perpetual Care Roundtable*, AMERICAN CEMETERY, Jan. 2014, at p. 33 (on file with the Insurance & Banking Subcommittee staff).

<sup>16</sup> *DFS Unitrust Analysis*, pp. 1, 7-9. Cemetery unitrusts may be used in Iowa beginning in 2016, while they have been authorized in Missouri in 2009 and in Tennessee in 2006. It appears unitrusts have largely been used in the long-term higher education and charitable foundation endowment trusts.

- Establish the net income approach as the “default trust distribution method” if cemetery licensee does not elect the unitrust distribution method,
  - Specify grounds disqualifying cemeteries from receiving unitrust distributions,
  - Provide requirements and procedures for cemetery to apply to the Board to use, modify, or resume the unitrust method; Board approval criteria, duration of approval, and power to order discontinuation of the unitrust method,
  - Provide requirements for the timing of unitrust distributions,
  - Require annual reporting by the C&M trustee,
  - Provide rulemaking authority for the licensing authority to prescribe forms and procedures for applications to implement this section.
- *Deposit Requirements for Burial Rights Proceeds:* Currently, s. 497.268, F.S., requires each cemetery company to set aside and deposit in its C&M trust fund certain amounts or percentages from sales of burial rights, which include graves, mausoleums, columbaria, ossuary, or scattering gardens. For *burial rights*, the Act requires 10 percent of all payments to be deposited into the C&M trust fund, a \$25 deposit for *burial rights* provided without charge, and a minimum of \$25 per *grave* for every sale made after September 30, 1993. For *mausoleums or columbaria*, 10 percent of payments must be deposited into the C&M trust fund.<sup>17</sup>
    - However, because graves, mausoleums, and columbaria are all “burial rights” under the Act, Section 10 of the PCS amends s. 497.268, F.S., to provide a consistent deposit requirement for these burial spaces and structures. As such, the PCS requires 10 percent of all sales of burial rights to be deposited into the C&M trust fund, and a \$25 minimum for each post-1993 sale of a burial right, and \$25 for each burial right provided without charge.
  - *Annual Reporting for C&M Trusts:* Section 497.269, F.S., requires trustees of C&M trust funds to provide an “adequate financial report” to DFS by April 1 every year, using forms and procedures specified by rule.
    - Section 11 of the PCS amends this section to clarify that the annual report record the *fair market value* of the C&M trust fund, which is defined in new s. 497.2675(1)(f), F.S.

### **Preneed Contracts**

A “preneed contract” is any arrangement or method, of which the provider of funeral merchandise or service has actual knowledge, whereby any person agrees to sell funeral merchandise or service in advance. Examples of burial or funeral merchandise are caskets, outer burial containers, urns, monuments, floral arrangements, and register books, and “burial service” includes any service offered or provided in connection with the final disposition, memorialization, interment, entombment, inurnment, or other disposition of human remains or cremated remains.<sup>18</sup>

Preneed sales are governed by part IV of the Act, which requires sellers of funeral merchandise or service to obtain a preneed license and also be licensed as a funeral establishment, cemetery company, direct disposal establishment, or monument establishment.<sup>19</sup>

The PCS makes the following changes to the preneed provisions of the Act:

<sup>17</sup> s. 497.005(7), F.S. A *grave space* is a space of ground in a cemetery intended to be used for the interment in the ground of human remains; a *mausoleum* is a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains; and a *columbarium* is a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains. s. 497.005(37), (42), and (16), F.S.

<sup>18</sup> s. 497.005(56), (6), and (7), F.S.

<sup>19</sup> s. 497.452, F.S. The statute exempts certain cemeteries owned by religious institutions from preneed licensure.

- *Definitions:* Section 1 of the PCS amends s. 497.005, F.S., to create definitions of “purchaser” and “beneficiary” for use in the context of death care service contracts between consumers and funeral homes and other preneed sellers. “Beneficiary” is defined as a natural person expressly identified in a preneed contract as the person for whom funeral merchandise or services are intended. “Purchaser” means a natural person who executes a preneed or an at-need contract for services or merchandise with a licensee.
- *Rulemaking Authority for Preneed Contracts Funded by Life Insurance:* Section 5 amends the Act’s rulemaking authority, s. 497.161, F.S., to provide authority for rules not inconsistent with part IV of the Act (relating to preneed sales) and the Florida Insurance Code that establish conditions of use for insurance as a funding mechanism for preneed contracts. According to the Division, the intent of this change is to create clear rulemaking authority for current Board rule 69K-8.005, F.A.C., relating to preneed contracts funded by life insurance, because the current statutory authority may be subject to challenge. The rule was adopted in 1996, prior to the implementation of legislative changes to the Administrative Procedure Act that significantly restricted rulemaking to clear grants of rulemaking authority.<sup>20</sup>
- *Repeal of Servicing Agent Exemption from Preneed Licensure:* In addition to authorizing sales and advertisement preneed contract, a preneed license is required in order to receive any funds for payment on a preneed contract. Currently, the license requirement for receipt of funds does not apply to state or national trust companies or banks or savings and loan associations with trust powers receiving any money in trust pursuant to the sale of a preneed contract. It also does not apply to any Florida corporation acting as a servicing agent that are 100 percent owned by persons licensed under part III of the Act (funeral directing, embalming, and related services), if:
  - No stockholder holds, owns, votes, or has proxies for more than 5 percent of the issued stock of such corporation,
  - The corporation has a blanket fidelity bond, covering all employees handling the funds, in the amount of \$50,000 or more issued by a licensed insurance carrier in this state, and
  - The corporation processes the funds directly to and from the trustee within the applicable time limits set forth in the Act.

However, this servicing agent exemption is not currently used and has been recommended for repeal by the industry. Section 20 of the PCS deletes the servicing agent exemption from preneed licensure in s. 497.452(2)(c), F.S.

- *Preneed Contract Forms:* Currently, s. 497.454, F.S., requires preneed licensees to file preneed contract forms and related forms with DFS for approval prior to use in order to guard against misleading contracts. The licensing authority cannot approve preneed contracts unless they meet certain criteria regarding content and format, including sequential prenumbering and specific disclosure regarding the preneed licensee’s ability to select trust funding or the financial responsibility alternative in s. 497.461, F.S. (surety bonding).<sup>21</sup>
  - Section 21 of the PCS amends s. 497.454, F.S., to provide that the licensing authority may not approve any *electronic or paper* preneed contract that does not provide for sequential prenumbering. Additionally, because the PCS repeals the financial responsibility alternative in s. 497.461, F.S., the PCS also removes the licensee’s method of securing preneed contract proceeds as a required disclosure.
- *Preneed Funeral Contract Consumer Protection Trust Fund:* The Act permits, in certain instances, a claim to be filed against the Florida Consumer Protection Trust Fund (FCPTF) where a purchaser has previously paid for a preneed contract, and the seller of the preneed contract subsequently

<sup>20</sup> See s. 120.536, F.S. DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, p. 7 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff.

<sup>21</sup> s. 497.454, F.S.

goes out of business or becomes insolvent, and will not or cannot perform the preneed contract.<sup>22</sup> The FCPTF is funded by varying portions of each preneed contract, remitted by preneed licensees; all moneys deposited, along with all accumulated *income*, are immune from liens, charges, judgments, and other creditors' claims and shall be used only for the express purposes authorized by the Act.

- Because the PCS is repealing s. 497.461, F.S., regarding surety bonding, Section 22 of the PCS amends s. 497.456, F.S., to remove a cross-reference to that statute. Additionally, the PCS provides that the deposited moneys and accumulated *appreciation* (replacing the term "income") are to be used solely for purposes set forth by the Act.
- **Disposition of Preneed Proceeds:** The Act requires that minimum percentages of proceeds from preneed contract sales be deposited and under the control of an authorized trustee (i.e., state or national trust companies or banks or savings and loan associations with trust powers). The amounts to be deposited depend on the item sold in the contract. The statute also gives powers and duties to the trustee to invest, protect, and to distribute principal and income, subject to rule by the licensing authority. Section 23 of the PCS:
  - Authorizes the Board to specify criteria, by rule, for the classification of items sold in a preneed contract,
  - Eliminates the method of determining wholesale cost, which industry has indicated is contract-driven and can result in overvaluation,
  - Replaces "principal and income" with "fair market value,"
  - Requires the trustee to submit annual reports with certain information to DFS, as specified by rule,
  - Subjects the trustee to the prudent investor rule in s. 518.11, F.S., instead of the current SBA permissible investment statute in s. 215.47, F.S.
  - Disallows the trustee from including life insurance policies or annuity contracts as investments or assets by or of the trust, and limits real estate assets to 25 percent of the trust,
  - Allows the trustee to allocate and divide capital gains and losses, and
  - Eliminates the licensee's power to revest title to trust assets subject to the alternative security provisions in ss. 497.461 and 497.462(2), F.S., which are being repealed in the PCS.
- **Cancellation of Preneed Contracts:** Section 497.459, F.S., provides rescission rights, disclosures, and remedies for preneed contract purchasers. Subsection (6) provides that all preneed contracts are cancelable, as long as a preneed contract does not restrict any contract purchaser or a qualified applicant or recipient of certain social benefits from making her or his contract irrevocable.
  - An irrevocable contract is written only for people who are qualified applicants for, or recipients of, supplemental security income (SSI), temporary assistance under the WAGES program or Medicaid. Once the contract is signed, it cannot be canceled and refunded. It is a means for a person or family to set aside a portion of their assets for future burial and funeral services. The amount of the irrevocable contract will not be counted as an asset when the person applies for aid,<sup>23</sup> which protects the recipient from exceeding income eligibility thresholds and becoming disqualified from the public benefits.
  - In some instances, a purchaser enters into an irrevocable preneed contract for an amount in excess of what the heirs ultimately use for burial, internment, etc., after the purchaser dies. In cases of closed estates or very small estates that do not warrant full probate

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<sup>22</sup> DFS DIVISION OF FUNERAL, CEMETERY, & CONSUMER SERVICES, *Claims Against the Consumer Protection Trust Fund*, <http://www.myfloridacfo.com/Division/FuneralCemetery/Consumers/PreneedClaims.htm> (last viewed Nov. 24, 2015). Whether such a claim will be paid, and how much will be paid on such a claim, is controlled by s. 497.456, F.S., and rule 69K-10.002, Fla. Admin. Code.

<sup>23</sup> DFS DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, *Consumer Tips: Preneed Contracts*, at <http://www.myfloridacfo.com/Division/FuneralCemetery/Consumers/ConsumerFAQ.htm> (last viewed Nov. 25, 2015).

- administration, the funeral home is left holding the remaining funds with no clear process of disposing of the funds that originated from SSI, Medicaid, or other specified public benefit.
- o Section 24 of the PCS amends s. 497.459(6), F.S., to provide that preneed contracts cannot restrict any purchaser who is also the *beneficiary* and qualified applicant/recipient of benefit funds from making her or his contract irrevocable. Additionally, the PCS clarifies that a preneed contract made irrevocable pursuant to this section cannot be canceled during the life or after the death of the contract purchaser or beneficiary.<sup>24</sup>
    - This ensures that the financial eligibility for the specified public benefits remain with the person as long as they receive benefits.
    - Additionally, the PCS requires unexpended monies spent on an irrevocable contract to be remitted to the Agency for Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary's final disposition.<sup>25</sup> This ensures that the state and federal governments recover their respective shares of the unexpended monies of the irrevocable contract.
  - *Repeal of Surety Bonding & Letters of Credit as Security for Preneed Contracts:* All preneed contracts must be secured by one of the following, and must specify the method of security utilized by the company: (1) A trust account, (2) A letter of credit (LOC) or surety bonding, or (3) An individual insurance policy.

According to DFS, trust funding and insurance funding are the long-term proven and safe methods for securing performance of preneed contracts. Since approximately 2004, there have been only two methods actually used by preneed licensees to secure performance of preneed contracts: (1) trust deposit of proceeds of the preneed contracts or (2) funding by life insurers licensed in Florida.<sup>26</sup>

Section 497.461, F.S., allows additional surety bonding, "and other forms of security or insurance." Section 497.462(2), F.S., allows letters of credit as an alternative form of security. To the best of the Division's knowledge, these alternatives have not been used in recent years, and are vague, untested, subject to abuse, unnecessary, and potentially dangerous to consumers.

The letter of credit provision, s. 497.462(2), F.S., relates primarily to surety bonding of preneed sales. The Legislature has previously amended s. 497.462, F.S., by adding subsection (11), which effectively prohibited use of surety bonding under s. 497.462, F.S., for new preneed contracts written after December 31, 2004. It is believed that the Legislature intended to entirely prohibit use of s. 497.462(2), F.S., as to preneed contracts written after 2004, but by oversight, subsection (11) only refers to bonding.

The Division believes the LOC concept is far inferior to trust deposits and even surety bonding. The LOC concept utilizes a body of law the Division and Board has no expertise in. The idea of using a LOC to secure obligations that may not come due for decades is loaded with potential dangers in the Division's opinion. The LOC option has never been used, and deleting the concept is advisable in the Division's opinion.

As such, the Division recommends repealing these alternatives to trust deposits. Section 26 of the PCS repeals s. 497.461, F.S., regarding surety bonding as an alternative to trust deposits. Section 27 of the PCS contains a savings clause for surety bonds in force under this section as of July 1, 2016, but states that no additional preneed contracts shall be added under such surety bonds after

<sup>24</sup> Section 1 of the PCS creates definitions of "purchaser" and "beneficiary" in s. 497.005, F.S.

<sup>25</sup> Section 497.005(32), F.S., defines "final disposition" as the final disposal of a dead human body by specified means, excluding cremation. AHCA administers the Medical Care Trust Fund, which consists of federal grants and is used to provide health care services to individuals eligible for Medicaid and Medicare. s. 20.425(4)(a), F.S.

<sup>26</sup> DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, pp. 24-25 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff.

July 1, 2016. Sections 28 and 29 of PCS likewise eliminate the letter of credit as an alternative to trust deposits in s. 497.462, F.S., and cross-references in s. 497.464(1), F.S.

- *Inactive Preneed Licensees:* If a preneed licensee elects to surrender his or her license or the licensing authority does not receive the required renewal application and fees, the licensee becomes inactive and is then prohibited from engaging in preneed sales with the public. Prior to becoming inactive, he or she must collect and deposit into trust all of the funds *paid toward* preneed contracts sold. Additionally, the licensing authority has rulemaking authority to review and investigate such inactive licensees to protect the preneed customers, including requiring the submission of unaudited or audited financial statements.
  - The PCS amends s. 497.465, F.S., to provide that prior to inactive status, the licensee must deposit into the trust all of the funds *received* from preneed contracts. This change is intended to clarify that the licensee cannot retain any of the funds and must put them into the trust account in their entirety. Additionally, the PCS removes the qualifier “unaudited or audited” from financial statements.

## B. SECTION DIRECTORY:

Section 1. Amends s. 497.005, F.S., relating to definitions.

Section 2. Amends s. 497.141, F.S., relating to licensing; application procedures.

Section 3. Amends s. 497.146, F.S., relating to licensing; address of record; changes; licensee responsibility.

Section 4. Amends 497.152, F.S., relating to disciplinary grounds.

Section 5. Amends s. 497.161, F.S., relating to other rulemaking provisions.

Section 6. Amends s. 497.264, F.S., relating to license not assignable or transferable.

Section 7. Amends s. 497.266, F.S., relating to care and maintenance trust fund; remedy of department for noncompliance.

Section 8. Amends s. 497.267, F.S., relating to disposition of income of care and maintenance trust fund; notice to purchasers and depositors.

Section 9. Creates s. 497.2675, F.S., relating to distributions from the care and maintenance trusts.

Section 10. Amends s. 497.268, F.S., relating to care and maintenance trust fund, percentage of payments for burial rights to be deposited.

Section 11. Amends s. 497.269, F.S., relating to care and maintenance trust fund; financial reports.

Section 12. Amends s. 497.273, F.S., relating to cemetery companies; authorized functions.

Section 13. Amends s. 497.274, F.S., relating to standards for grave spaces.

Section 14. Amends s. 497.277, F.S., relating to other charges.

Section 15. Amends s. 497.283, F.S., relating to prohibition on sale of personal property or services.

Section 16. Amends s. 497.286, F.S., relating to owners to provide addresses; presumption of abandonment; abandonment procedures; sale of abandoned unused burial rights.

Section 17. Amends s. 497.371, F.S., relating to embalmers; establishment of embalmer apprentice program.

Section 18. Amends s. 497.372, F.S., relating to funeral directing; conduct constituting practice of funeral directing.

Section 19. Amends s. 497.381, F.S., relating to solicitation of goods or services.

Section 20. Amends s. 497.452, F.S., relating to preneed license required.

Section 21. Amends s. 497.454, F.S., relating to approval of preneed contract and related forms.

Section 22. Amends s. 497.456, F.S., relating to Preneed Funeral Contract Consumer Protection Trust Fund.

Section 23. Amends s. 497.458, F.S., relating to disposition of proceeds received on contracts.

Section 24. Amends s. 497.459, F.S., relating to cancellation of, or default on, preneed contracts.

Section 25. Amends s. 497.460, F.S., relating to payment of funds upon death of named beneficiary.

Section 26. Repeals s. 497.461, F.S., relating to surety bonding as alternative to trust deposit.

Section 27. Provides a savings clause for the repeal of s. 497.461, F.S.

Section 28. Amends s. 497.462, F.S., relating to other alternatives to deposits under s. 497.458, F.S.

Section 29. Amends s. 497.464, F.S., relating to alternative preneed contracts.

Section 30. Amends s. 497.465, F.S., relating to inactive, surrendered, and revoked preneed licensees.

Section 31. Amends s. 497.601, F.S., relating to direct disposition; duties.

Section 32. Amends s. 497.607, F.S., relating to cremation; procedure required.

Section 33. Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The PCS's requirement that cemetery companies remit unexpended irrevocable preneed contract funds to AHCA for deposit into the Medical Care Trust Fund after the beneficiary's final disposition is an indeterminate but positive impact on state government.

#### 2. Expenditures:

According to DFS, the PCS will not result in increased costs. The PCS may reduce some operational costs to the DFS, particularly the provisions relating to use of email for license renewal and other communications with licensees. DFS projects recurring savings to be in the range of \$20,000 per year.<sup>27</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The unitrust proposal may provide a benefit to cemetery licensees in the form of increased annual distributions to licensed cemeteries to defray cemetery care and maintenance expenses; however, the Division states there is too little experience among other state funeral and cemetery regulators with the concept to make specific projections.

The requirement for annual trustee reports to DFS may increase costs to the approximately 370 preneed licensees in the state. The costs would be in the form of increased fees charged by preneed trustees to preneed licensees. DFS believes the cost will be relatively insignificant, because the trustees already have and provide the information to the preneed licensees. DFS believes the recurring cost might be in the range of \$250 per licensee per year.<sup>28</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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<sup>27</sup> Florida Department of Financial Services, Agency Analysis of 2016 House Bill 473, p.3 (Nov. 23, 2015).

<sup>28</sup> *Id.*

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS does not appear to affect county or municipal governments

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The PCS authorizes the licensing authorities to adopt new rules regarding several aspects of the Act. In some instances, the PCS merely provides clearer statutory authority for existing rules:

- Forms and procedures, including electronic reporting of data required relating to changes in licensees' information;
- Rules that are not inconsistent with part IV of the Act and the Insurance Code establishing conditions of use for insurance as a funding mechanism for preneed contracts;
- Timeframes for cemetery licensees to change their care and maintenance trust distribution method;
- Forms and procedures for applications and to implement the new unitrust statute, s. 497.2675, F.S.;
- Rules allowing for fees exceeding the current \$50 cap for transfers of burial rights;
- Rules specifying criteria for the classification of items sold in a preneed contract as services, merchandise, or cash advances; and
- Rules relating to the format and content of annual reports filed by trustees of preneed trust accounts, starting April 1, 2018.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 9 of the PCS creates a definition of "fair market value" and "capital gain or loss," along with other new definitions in new s. 497.2675, F.S. These new definitions "apply [specifically] for purposes of care and maintenance trusts" (lines 322-323). However, "fair market value" appears in the PCS in contexts other than C&M trusts, such as preneed contract funds that must be held in trust (see lines 912, 923, 943, and 1038). Similarly, "capital gains and losses" appears in a preneed statute (line 975). To ensure that "fair market value" and "capital gains and losses" are used consistently throughout the Act, these terms should be moved to the general definitions section, s. 497.005, F.S.

**V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
2           An act relating to funeral, cemetery, and consumer  
3           services; amending s. 497.005, F.S.; defining terms;  
4           amending s. 497.141, F.S.; revising required  
5           information for licensure to include e-mail addresses;  
6           requiring the Department of Financial Services to  
7           include e-mail notification as a means to administer  
8           the licensing process; amending s. 497.146, F.S.;  
9           revising required information for current licensees to  
10          include e-mail notification; amending s. 497.152,  
11          F.S.; conforming provisions to changes made by the  
12          act; requiring, rather than authorizing, the Board of  
13          Funeral, Cemetery, and Consumer Services to provide  
14          certain criteria; prohibiting the board from requiring  
15          a fine when certain deficiencies are fully corrected  
16          within a specified period; amending s. 497.161, F.S.;  
17          requiring the Division of Funeral, Cemetery, and  
18          Consumer Services to authorize specified rules for  
19          preneed contracts; amending s. 497.264, F.S.;  
20          requiring cemetery licensees to provide e-mail address  
21          to the department; amending s. 497.266, F.S.; revising  
22          the prohibition against withdrawal or transfer of  
23          assets within the care and maintenance trust fund to  
24          include an exception; amending s. 497.267, F.S.;  
25          revising provisions relating to the disposition of  
26          withdrawals from the care and maintenance trust fund;

27 creating s. 497.2675, F.S.; defining terms; providing  
 28 for unitrust distribution method option and  
 29 requirements; eligibility for distributions; providing  
 30 for board authority to discontinue or modify unitrust  
 31 method; requiring annual reports for unitrust method;  
 32 authorizing the board to adopt certain rules; amending  
 33 s. 497.268, F.S.; conforming provisions to changes  
 34 made by the act; deleting a required deposit in a  
 35 cemetery company's care and maintenance trust fund for  
 36 mausoleums or columbaria; deleting the requirement  
 37 that taxes on capital gain be paid from the trust  
 38 corpus; amending s. 497.269, F.S.; requiring a trustee  
 39 to annually furnish financial reports that record the  
 40 fair market value of the care and maintenance trust  
 41 fund; amending ss. 497.273 and 497.274, F.S.;  
 42 conforming provisions to changes made by the act;  
 43 amending s. 497.277, F.S.; revising a limitation on  
 44 the fee for transfer of burial rights from one  
 45 purchaser to another; authorizing the board to  
 46 determine the transfer fee; amending ss. 497.283 and  
 47 497.286, F.S.; conforming provisions to changes made  
 48 by the act; amending s. 497.371, F.S.; providing that  
 49 an applicant for the embalmer apprentice program may  
 50 not be licensed without a determination of character  
 51 by the licensing authority; amending ss. 497.372 and  
 52 497.381, F.S.; conforming provisions to changes made

53 by the act; amending s. 497.452, F.S.; deleting an  
 54 exception that prohibits a person from receiving  
 55 specified funds without holding a valid preneed  
 56 license; amending ss. 497.454; conforming provisions  
 57 to changes made by the act; amending s. 497.456, F.S.;  
 58 conforming provisions to changes made by the act;  
 59 amending s. 497.458, F.S.; revising requirements  
 60 relating to the disposition of proceeds on a preneed  
 61 contract; authorizing the board to adopt rules to  
 62 classify items sold in preneed contracts; requiring the  
 63 trustee to furnish the department with an annual  
 64 report regarding preneed licensee trust accounts  
 65 beginning on a specified date; providing requirements  
 66 for the annual report; revising which investments a  
 67 trustee of a trust has the power to invest in;  
 68 deleting provisions relating to the preneed licensee;  
 69 amending s. 497.459, F.S.; prohibiting certain preneed  
 70 contracts from being canceled during the life or after  
 71 the death of the contract purchaser; amending s.  
 72 497.460, F.S.; conforming provisions to changes made  
 73 by the act; repealing s. 497.461, F.S., relating to  
 74 the authorization for a preneed licensee to elect  
 75 surety bonding as an alternative to depositing funds  
 76 into a trust; amending s. 497.462, F.S.; deleting  
 77 obsolete references to surety bonds; amending s.  
 78 497.464, F.S.; conforming provisions to changes made

79 by the act; amending s. 497.465, F.S.; requiring an  
 80 inactive preneed licensee to deposit a specified  
 81 amount of funds received on certain preneed contracts  
 82 into the trust upon a specified time; amending ss.  
 83 497.601 and 497.607, F.S.; specifying that cremated  
 84 remains are not property; requiring a division of  
 85 cremated remains to be consented to by certain  
 86 persons; providing that a dispute shall be resolved by  
 87 a court of competent jurisdiction; conforming  
 88 provisions to changes made by the act; providing an  
 89 effective date.

90

91 Be It Enacted by the Legislature of the State of Florida:

92 Section 1. Present subsections (5) through (61) and (63)  
 93 through (71) of section 497.005, Florida Statutes, are  
 94 redesignated as subsections (6) through (61), and (63) through  
 95 (73), respectively, and new subsections (5) and (62) are added  
 96 to that section, to read:

97 497.005 Definitions.—As used in this chapter, the term:

98 (5) "Beneficiary" means a natural person expressly  
 99 identified in a preneed contract as the person for whom funeral  
 100 merchandise or services are intended.

101 (62) "Purchaser" means a natural person who executes a  
 102 preneed or an at-need contract for services or merchandise with  
 103 a licensee.

104 Section 2. Subsections (2) and (11) of section 497.141,

105 Florida Statutes, are amended to read:

106 497.141 Licensing; general application procedures.—

107 (2) Any person desiring to be licensed shall apply to the  
 108 licensing authority in writing using such forms and procedures  
 109 as may be prescribed by rule. The application for licensure  
 110 shall include the applicant's social security number if the  
 111 applicant is a natural person; otherwise, the applicant's  
 112 federal tax identification number shall be included.

113 Notwithstanding any other provision of law, the department is  
 114 the sole authority for determining the forms and form contents  
 115 to be submitted for initial licensure and licensure renewal  
 116 application. Such forms and the information and materials  
 117 required by such forms may include, as appropriate,  
 118 demographics, education, work history, personal background,  
 119 criminal history, finances, business information, signature  
 120 notarization, performance periods, reciprocity, local government  
 121 approvals, supporting documentation, periodic reporting  
 122 requirements, fingerprint requirements, continuing education  
 123 requirements, business plans, character references, email  
 124 addresses, and ongoing education monitoring. Such forms and the  
 125 information and materials required by such forms may also  
 126 include, to the extent such information or materials are not  
 127 already in the possession of the department or the board,  
 128 records or information as to complaints, inspections,  
 129 investigations, discipline, and bonding. The application shall  
 130 be supplemented as needed to reflect any material change in any

131 | circumstance or condition stated in the application that takes  
 132 | place between the initial filing of the application and the  
 133 | final grant or denial of the license and that might affect the  
 134 | decision of the department or the board. After an application by  
 135 | a natural person for licensure under this chapter is approved,  
 136 | the licensing authority may require the successful applicant to  
 137 | provide a photograph of himself or herself for permanent  
 138 | lamination onto the license card to be issued to the applicant,  
 139 | pursuant to rules and fees adopted by the licensing authority.

140 |       (11) The department shall implement a system for  
 141 | administration of the overall licensing process, including email  
 142 | notification for the processing and tracking of applications for  
 143 | licensure, the issuance of licenses approved by the board, the  
 144 | tracking of licenses issued, the administration of the license  
 145 | renewal process, and the collection and processing of fees  
 146 | related to those activities. The system may use staff and  
 147 | facilities of the department or the department may enter into a  
 148 | contract for all or any part of such system, upon such terms and  
 149 | conditions as the department deems advisable, and such contract  
 150 | may be with another government agency or a private business.

151 |       Section 3. Section 497.146, Florida Statutes, is amended  
 152 | to read:

153 |       497.146 Licensing; address of record; changes; licensee  
 154 | responsibility.—Each licensee under this chapter is responsible  
 155 | for notifying the department in writing of the licensee's  
 156 | current email address, business and residence mailing address,

157 and the street address of the licensee's primary place of  
 158 practice and shall notify the department ~~in writing~~ within 30  
 159 days after any change in such information, in accordance with  
 160 procedures and forms prescribed by rule. Notwithstanding any  
 161 other provision of law, electronic notification service ~~by~~  
 162 ~~regular mail~~ to a licensee's last known email address of record  
 163 or preferred street address of record with the department  
 164 constitutes adequate and sufficient notice to the licensee for  
 165 any official communication to the licensee by the board or the  
 166 department, except when other service is expressly required by  
 167 this chapter. The department may adopt rules, forms, and  
 168 procedures, including electronic reporting of any and all data  
 169 required to be provided by this section. ~~Rules may be adopted~~  
 170 ~~establishing forms and procedures for licensees to provide the~~  
 171 ~~notice required by this section.~~

172 Section 4. Paragraphs (b) and (e) of subsection (8),  
 173 paragraph (d) of subsection (12), paragraphs (b) and (c) of  
 174 subsection (14), and paragraph (b) of subsection (15) of section  
 175 497.152, Florida Statutes, are amended to read:

176 497.152 Disciplinary grounds.—This section sets forth  
 177 conduct that is prohibited and that shall constitute grounds for  
 178 denial of any application, imposition of discipline, or other  
 179 enforcement action against the licensee or other person  
 180 committing such conduct. For purposes of this section, the  
 181 requirements of this chapter include the requirements of rules  
 182 adopted under authority of this chapter. No subsection heading

183 in this section shall be interpreted as limiting the  
 184 applicability of any paragraph within the subsection.

185 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF  
 186 HUMAN REMAINS.—

187 (b) Refusing to surrender promptly the custody of a dead  
 188 human body upon the express order of the ~~person~~ legally  
 189 authorized person to such person's ~~its~~ custody; however, this  
 190 provision shall be subject to any state or local laws or rules  
 191 governing custody or transportation of dead human bodies.

192 (e) Failing to obtain written authorization from a legally  
 193 authorized person before ~~the family or next of kin of the~~  
 194 ~~deceased prior to~~ entombment, interment, disinterment,  
 195 disentombment, or disinurnment of the remains of any human  
 196 being.

197 (12) DISCLOSURE REQUIREMENTS.—

198 (d) Failure by a funeral director to make full disclosure  
 199 in the case of a funeral or direct disposition with regard to  
 200 the use of funeral merchandise that is not to be disposed of  
 201 with the body or failure to obtain written permission from a  
 202 legally authorized person ~~the purchaser~~ regarding disposition of  
 203 such merchandise.

204 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY  
 205 CUSTOMERS.—

206 (b) Committing or performing with such frequency as to  
 207 indicate a general business practice any of the following:

208 1. Failing to acknowledge and act promptly upon

209 communications from a licensee's customers and their  
 210 representatives with respect to claims or complaints relating to  
 211 the licensee's activities regulated by this chapter.

212 2. Denying claims or rejecting complaints received by a  
 213 licensee from a customer or customer's representative, relating  
 214 to the licensee's activities regulated by this chapter, without  
 215 first conducting reasonable investigation based upon available  
 216 information.

217 3. Attempting to settle a claim or complaint on the basis  
 218 of a material document that was altered without notice to, or  
 219 without the knowledge or consent of, the contract purchaser or a  
 220 legally authorized person ~~her or his representative or legal~~  
 221 ~~guardian~~.

222 4. Failing within a reasonable time to affirm or deny  
 223 coverage of specified services or merchandise under a contract  
 224 entered into by a licensee upon written request of the contract  
 225 purchaser or a legally authorized person ~~her or his~~  
 226 ~~representative or legal guardian~~.

227 5. Failing to promptly provide, in relation to a contract  
 228 for funeral or burial merchandise or services entered into by  
 229 the licensee or under the licensee's license, a reasonable  
 230 explanation to the contract purchaser or a legally authorized  
 231 person ~~her or his representative or legal guardian~~ of the  
 232 licensee's basis for denying or rejecting all or any part of a  
 233 claim or complaint submitted.

234 (c) Making a material misrepresentation to a contract

235 purchaser or a legally authorized person ~~her or his~~  
 236 ~~representative or legal guardian~~ for the purpose and with the  
 237 intent of effecting settlement of a claim or complaint or loss  
 238 under a prepaid contract on less favorable terms than those  
 239 provided in, and contemplated by, the prepaid contract.  
 240 For purposes of this subsection, the response of a customer  
 241 recorded by the customer on a customer satisfaction  
 242 questionnaire or survey form sent to the customer by the  
 243 licensee, and returned by the customer to the licensee, shall  
 244 not be deemed to be a complaint.

245 (15) MISCELLANEOUS FINANCIAL MATTERS.—

246 (b) Failing to timely remit as required by this chapter  
 247 the required amounts to any trust fund required by this chapter.  
 248 The board shall ~~may~~ by rule provide criteria for identifying  
 249 minor, nonwillful trust remittance deficiencies; and remittance  
 250 deficiencies falling within such criteria, if fully corrected  
 251 within 30 days after notice to the licensee by the department,  
 252 do ~~shall~~ not constitute grounds for a fine or other disciplinary  
 253 action.

254 Section 5. Paragraph (g) is added to subsection (1) of  
 255 section 497.161, Florida Statutes, to read:

256 497.161 Other rulemaking provisions.—

257 (1) In addition to such other rules as are authorized or  
 258 required under this chapter, the following additional rules, not  
 259 inconsistent with this chapter, shall be authorized by the  
 260 licensing authority.

261 (g) Rules, not inconsistent with part IV of this chapter  
 262 and the Florida Insurance Code, establishing conditions of use  
 263 for insurance as a funding mechanism for preneed contracts.

264 Section 6. Paragraphs (c) and (d) of subsection (2) of  
 265 section 497.264, Florida Statutes, are amended to read:

266 497.264 License not assignable or transferable.—

267 (2) Any person or entity that seeks to purchase or  
 268 otherwise acquire control of any cemetery licensed under this  
 269 chapter shall first apply to the licensing authority and obtain  
 270 approval of such purchase or change in control.

271 (c) For applications by a natural person, the application  
 272 shall state the applicant's name, email address, residence  
 273 address, address of principal office or place of employment, and  
 274 social security number.

275 (d) For applications by an entity, the application shall  
 276 state the applicant's name, email address, address of principal  
 277 place of business or headquarters offices, the names and titles  
 278 of all officers of the applicant, their individual email  
 279 addresses, the applicant's state of domicile and date of  
 280 formation, and the applicant's federal tax identification  
 281 number.

282 Section 7. Subsections (3) and (4) of section 497.266,  
 283 Florida Statutes, are amended to read:

284 497.266 Care and maintenance trust fund; remedy of  
 285 department for noncompliance.—

286 (3) ~~A~~ ~~Ne~~ person may not withdraw or transfer any portion

287 of assets within ~~the corpus~~ of the care and maintenance trust  
 288 fund, except as authorized by s.497.2675, without first  
 289 obtaining written consent from the licensing authority.

290 (4) The trustee of the trust established pursuant to this  
 291 section may only invest in investments and loan trust funds, as  
 292 prescribed in s. 497.458. The trustee shall take title to the  
 293 property conveyed to the trust for the purposes of investing,  
 294 protecting, and conserving it for the cemetery company;  
 295 collecting income; and distributing withdrawals from the trust  
 296 ~~the principal and income~~ as prescribed in this chapter. The  
 297 cemetery company is prohibited from sharing in the discharge of  
 298 the trustee's responsibilities under this subsection, except  
 299 that the cemetery company may request the trustee to invest in  
 300 tax-free investments.

301 Section 8. Section 497.267, Florida Statutes, is amended  
 302 to read:

303 497.267 Disposition of withdrawals from the ~~income of~~ care  
 304 and maintenance trust fund; notice to purchasers and  
 305 depositors. Withdrawals from the ~~The net income of the~~ care and  
 306 maintenance trust fund shall be used solely for the care and  
 307 maintenance of the cemetery, including maintenance of monuments,  
 308 which maintenance may ~~shall~~ not be deemed to include the  
 309 cleaning, refinishing, repairing, or replacement of monuments;  
 310 for reasonable costs of administering the care and maintenance;  
 311 and for reasonable costs of administering the trust fund. At the  
 312 time of making a sale or receiving an initial deposit, the

313 cemetery company shall deliver to the person to whom the sale is  
 314 made, or who makes a deposit, a written instrument which shall  
 315 specifically state the purposes for which withdrawals from the  
 316 ~~income of the~~ trust fund shall be used.

317 Section 9. Section 497.2675, Florida Statutes, is created  
 318 to read:

319 497.2675 Distributions from the care and maintenance  
 320 trusts.

321 (1) DEFINITIONS. In addition to definitions provided in s.  
 322 497.005, the following definitions shall apply for purposes of  
 323 care and maintenance trusts:

324 (a) "Average fair market value" means, as determined by the  
 325 trustee of a care and maintenance trust, the average of the fair  
 326 market values of assets held by the trust on January 1 of the  
 327 current and January 1 of each of the 2 preceding years, or for  
 328 the entire term of the trust if there are less than 2 preceding  
 329 years, and adjusted as follows:

330 1. If assets have been added to the trust during the years used  
 331 to determine the average, the amount of each addition is added  
 332 to all years in which such addition was not included.

333 2. If assets have been distributed from the trust during the  
 334 years used to determine the average, other than in satisfaction  
 335 of the unitrust amount, the amount of each distribution is  
 336 subtracted from all years in which such distribution was not  
 337 included.

338 (b) "Capital gain" or "capital loss" means a change in the fair

339 market value of a capital asset, such as investment or real  
 340 estate, that gives it a different worth than the purchase  
 341 price. A capital gain or loss may be realized or unrealized. A  
 342 capital gain or loss is not realized until the asset is sold.  
 343 (c) "Ordinary income" means interest, dividends, rents and other  
 344 amounts received by the trust as current returns on trust  
 345 investments, but excluding: realized or unrealized capital gains  
 346 or losses; deposits to trust required under Chapter 497 and  
 347 other contributions of principal to the trust; and amounts  
 348 received as full or partial payment for the sale, transfer, or  
 349 exchange of a trust asset.  
 350 (d) "Net ordinary income of the trust" means, as determined by  
 351 the trustee of the care and maintenance trust, the annual  
 352 ordinary income of the trust reduced by the annual amount of  
 353 expenses of operating the trust, including but not limited to  
 354 trustee fees, appraisal fees, investment advisor fees, and  
 355 accounting fees; and reduced further by the annual amount of  
 356 income and other taxes, excluding capital gains taxes, paid or  
 357 due in regard to the trust's ordinary income.  
 358 (e) "Net ordinary income trust distribution method" is the  
 359 method of calculating the annual amount to be distributed to a  
 360 cemetery licensee from its care and maintenance trust, in which  
 361 method the annual net ordinary income of the trust is determined  
 362 by the trustee and that amount is distributed to the cemetery  
 363 licensee.  
 364 (f) "Fair market value" means the fair market value of the

365 assets held by the trust, reduced by all known noncontingent  
 366 liabilities. The fair market value of trust assets that are not  
 367 publicly traded on a stock or other regulated securities  
 368 exchange, shall be determined by written appraisal by a  
 369 qualified independent public appraiser not affiliated with the  
 370 cemetery licensee or its principals; no such appraisal shall be  
 371 relied upon by the trustee if it was not issued or re-confirmed  
 372 in writing by the appraiser within two years prior to the date  
 373 the appraisal is used by the trustee in the trustees fair market  
 374 value determinations.

375 (g) "Income" means interest, dividends, rents, and other money  
 376 that the trustee receives as current return from a principal  
 377 asset, and which is not received as full or partial payment for  
 378 the sale, transfer, or exchange of a trust asset.

379 (h) "Unitrust amount" and "unitrust distribution" means the  
 380 amount distributable from the care and maintenance trust to the  
 381 cemetery licensee owning the trust, as calculated using the  
 382 unitrust distribution method.

383 (i) "Unitrust distribution percentage" is a percentage between  
 384 three and five percent, inclusive, as specifically approved by  
 385 the Board for a particular cemetery licensee upon application by  
 386 the licensee to receive a unitrust distribution from the  
 387 licensee's care and maintenance trust. In no event shall a  
 388 unitrust distribution percentage in excess of five percent be  
 389 authorized.

390 (j) "Unitrust distribution method" is the method of calculating

391 the amount to be distributed to a cemetery licensee from its  
 392 care and maintenance trust, in which method the average fair  
 393 market value of the care and maintenance trust, or the preneed  
 394 licensee's prorata share of a master trust, is multiplied by a  
 395 unitrust distribution percentage, and the resulting unitrust  
 396 amount is distributed to the cemetery licensee, all as more  
 397 specifically described herein.

398 (2) DEFAULT TRUST DISTRIBUTION METHOD. Unless authorization for  
 399 a unitrust distribution has been applied for and approved by the  
 400 board in accordance with this section, there may be distributed  
 401 from a care and maintenance trust to a cemetery licensee only  
 402 the net ordinary income of the trust. Such distribution shall  
 403 be at such time as the trustee is able to determine the net  
 404 ordinary income of the trust.

405 (3) CEMETERIES NOT ELIGIBLE TO RECEIVE A UNITRUST DISTRIBUTION.

406 (a) A cemetery shall not be eligible to apply for or receive a  
 407 unitrust distribution from its care and maintenance trust if a  
 408 unitrust distribution would be materially inconsistent with the  
 409 terms and conditions of the cemetery's bylaws or existing care  
 410 and maintenance trust agreement document. A cemetery licensee  
 411 operating under cemetery bylaws or a care and maintenance trust  
 412 that specifies or by fair implication indicates that only the  
 413 net ordinary income of the trust shall be distributed, and who  
 414 desires to be able to receive a unitrust distribution from the  
 415 trust, shall apply to the Board through the Division, for  
 416 approval to amend or replace such bylaws and/or trust agreement

417 to allow the cemetery licensee to seek a unitrust distribution  
 418 from the trust. The Board shall approve such application to  
 419 amend the bylaws or trust agreement if the board finds that  
 420 there are reasonable grounds to believe that approval would be  
 421 in the best interests of the perpetual care of the cemetery, and  
 422 under all the circumstances of the particular case, would be in  
 423 the best interest of persons then owning interment spaces in the  
 424 cemetery and the families of persons already interred in the  
 425 cemetery.

426 (b) A cemetery shall not be approved to receive or continue  
 427 to receive a unitrust distribution from its care and maintenance  
 428 trust if there is an uncorrected care and maintenance trust  
 429 deficiency as determined by an examination report of the  
 430 Division, which report has become final or is pending.

431 (4) APPLICATION TO USE THE UNITRUST DISTRIBUTION METHOD.

432 (a) A licensed cemetery that is not ineligible under (3) above,  
 433 may apply to the Board through the Division for approval to use  
 434 the unitrust distribution method. The application shall:  
 435 1. Be signed by an officer of the licensed cemetery;  
 436 2. State the cemetery's name, license number, and address.  
 437 3. Provide a copy of the cemetery's existing bylaws, and the  
 438 care and maintenance trust agreement.  
 439 4. If the applicant seeks approval of an amendment or  
 440 replacement of its bylaws or care and maintenance trust  
 441 agreement, provide a copy of the proposed amended or replacement  
 442 bylaws and/or care and maintenance trust agreement, identifying

443 all material changes from the existing bylaws and care and  
 444 maintenance trust agreement, as applicable.  
 445 5. Provide a letter from, as applicable, the trustee or proposed  
 446 trustee of the care and maintenance trust, signed and dated by a  
 447 representative of the trustee, in which letter the trustee:  
 448 a. advises the Board that the trustee is able and willing to  
 449 implement the unitrust distribution method as regards to  
 450 applicant's care and maintenance trust; and  
 451 b. sets forth the trustee's average fair market value  
 452 calculations and related and supporting data referenced in  
 453 (1) (a) above.  
 454  
 455 6. Specify the unitrust distribution percentage the applicant  
 456 seeks approval of.  
 457 7. Provide copies of an annual report of the trustee of the  
 458 cemetery's care and maintenance trust, for each of the preceding  
 459 five years, or for each year the cemetery has been licensed,  
 460 whichever period is shorter.  
 461 8. Certify to the Board that all amounts required by Chapter 497  
 462 to have been deposited into the trust, have been deposited, and  
 463 that there have been no withdrawals from the trust in excess of  
 464 those allowed under Chapter 497, to the best of the knowledge  
 465 and belief of cemetery management, and that there is not pending  
 466 any unresolved Division examination report asserting a  
 467 deficiency in the care and maintenance trust.  
 468 9. Certify to the Board that cemetery management has conducted

469 or caused to be conducted and have reviewed an analysis of the  
 470 proposed implementation of the unitrust distribution method as  
 471 applied to the cemetery's care and maintenance trust, and to the  
 472 best of the knowledge and belief of the cemetery's management  
 473 implementation of the unitrust distribution method will not  
 474 result in lower end of year care and maintenance trust principal  
 475 balances, than would be the case under the net ordinary income  
 476 trust distribution method.

477 (b) APPROVAL CRITERIA. The board shall approve the application  
 478 unless the Board determines, based on all the evidence available  
 479 to the board, that as regards that applicant's care and  
 480 maintenance trust, the unitrust distribution method is likely  
 481 to have a materially less favorable long term impact on the  
 482 cemetery' care and maintenance trust as a resource to provide  
 483 for the perpetual care of the cemetery after the cemetery ceases  
 484 active operations, as compared to the net ordinary income trust  
 485 distribution method.

486 (c) DURATION OF APPROVAL. An approval to use the unitrust  
 487 distribution shall continue in effect indefinitely until the  
 488 cemetery licensee applies to the Board and is approved to modify  
 489 its application of the unitrust distribution method, or to  
 490 revert to the net ordinary income trust distribution method, or  
 491 until the cemetery licensee is ordered by the Board to modify or  
 492 discontinue use of the unitrust distribution method.

493 (d) TEMPORARY INITIAL UNITRUST DISTRIBUTION PERCENTAGE. The  
 494 maximum unitrust distribution percentage that shall be approved

495 for the first 12 months of an applicant's use of the unitrust  
 496 distribution method, shall be 4.5 percent. If the Board in the  
 497 initial application proceeding approved a unitrust distribution  
 498 percentage higher than 4.5 percent, then upon expiration of the  
 499 said 12 months, the applicant may without further application or  
 500 proceedings commence use of the higher approved unitrust  
 501 distribution percentage.

502 (5) APPLICATION TO MODIFY UNITRUST DISTRIBUTION METHOD IN  
 503 EFFECT.

504 (a) A cemetery licensee that has been approved to and is using  
 505 the unitrust distribution method, and desires to decrease the  
 506 unitrust distribution percentage being utilized, may do so  
 507 without approval by the Board, but shall advise the Division in  
 508 a signed and dated writing explaining the change, the effective  
 509 date of the change, and the revised lower unitrust distribution  
 510 percentage that will be used, within 30 days of the change.

511 (b) A cemetery licensee that has been approved to and is using  
 512 the unitrust distribution method, and desires to increase the  
 513 unitrust distribution percentage, or otherwise to materially  
 514 modify its implementation of the unitrust distribution method  
 515 from as described to and approved by the Board in the cemetery  
 516 licensee's application to use the unitrust distribution method,  
 517 shall prior to effecting such change apply to and receive  
 518 approval from the Board concerning such change. The board shall  
 519 approve the application for change unless the Board determines  
 520 that approval would not be in the long term best interests of

521 the cemetery' care and maintenance trust as a resource to  
 522 provide for the perpetual care of the cemetery after the  
 523 cemetery ceases active operations.  
 524 (6) REVERSION TO NET ORDINARY INCOME DISTRIBUTION METHOD.  
 525 A cemetery licensee that has been approved to and is using the  
 526 unitrust distribution method, and desires to revert to the net  
 527 ordinary income trust distribution method, shall prior to  
 528 effecting such change apply to and receive approval from the  
 529 Board concerning such change. The Board shall approve such  
 530 application unless it determines that approval would not be in  
 531 the long term best interests of the care and maintenance trust  
 532 as a resource to provide for the perpetual care of the cemetery  
 533 after the cemetery ceases active operations  
 534 (7) APPLICATION TO RESUME THE UNITRUST DISTRIBUTION METHOD.  
 535 A cemetery licensee that has been approved to revert from the  
 536 unitrust distribution method to the net ordinary income trust  
 537 distribution method, and thereafter desires to resume use of the  
 538 unitrust distribution method, shall prior to effecting such  
 539 change apply to and receive approval from the Board concerning  
 540 such change, by application as in (4) of this section, and  
 541 providing with said application a written explanation by the  
 542 applicant of the history of and reasons for the past and  
 543 proposed changes to the cemetery licensee's method of  
 544 distribution from its care and maintenance trust. The Board  
 545 shall approve such change only if it determines that approval  
 546 would clearly be in the long term best interests of the care and

547 maintenance trust as a resource to provide for the perpetual  
 548 care of the cemetery after the cemetery ceases active  
 549 operations.

550 (8) TIMING OF DISTRIBUTIONS UNDER UNITRUST DISTRIBUTION METHOD.

551 The unitrust distribution calculated pursuant to the unitrust  
 552 distribution method as approved by the Board for a particular  
 553 licensee, shall be distributed to the preneed licensee in equal  
 554 monthly or quarterly payments, at the end of each month or  
 555 quarter as the case may be.

556 (9) DISTRIBUTION METHOD CHANGES TO COINCIDE WITH CALENDAR YEARS.

557 A cemetery licensee may not apply to change its care and  
 558 maintenance trust distribution method more than once in any 36  
 559 month period, provided the Board may by rule shorten or expand  
 560 the 36 month period if it deems it advisable in the best  
 561 interests of care and maintenance trusts, based on experienced  
 562 gained by the Board in the use of the unitrust distribution  
 563 method. A cemetery licensee may only use one method of  
 564 calculating distributions from its care and maintenance trust in  
 565 any one calendar year. Any change in care and maintenance trust  
 566 distribution method shall be effectuated on January 1 of the  
 567 calendar year following approval of such change by the Board.

568 (10) BOARD MAY ORDER DISCONTINUATION OR MODIFICATION OF A  
 569 LICENSEE'S USE OF THE UNITRUST DISTRIBUTION METHOD.

570 As regards a cemetery that has been approved to and is using the  
 571 unitrust distribution method, if at any time the Board  
 572 determines, based on all the evidence available to the board,

573 that the use or continued use of the unitrust distribution  
 574 method by that trust has resulted in or is likely to result in a  
 575 materially unfavorable long term impact on the cemetery' care  
 576 and maintenance trust as a resource to provide for the perpetual  
 577 care of the cemetery after the cemetery ceases active  
 578 operations, as compared to other available distribution options  
 579 allowed under this section, the board may order the prospective  
 580 modification of the unitrust distribution method as applied to  
 581 the cemetery licensee, or may order that the cemetery licensee  
 582 revert to the net ordinary income trust distribution method.

583 (11) ANNUAL REPORTS.

584 (a) A cemetery licensee utilizing the unitrust distribution  
 585 method shall cause the trustee of the care and maintenance trust  
 586 each year to prepare and provide to the Division a report as  
 587 required by s. 497.269, and in addition shall cause the trustee  
 588 to provide the following information to the Division with said  
 589 report:

- 590 1. the net ordinary income of the trust for the calendar year  
 591 being reported; and
- 592 2. setting forth the average fair market value calculations and  
 593 related and supporting data referenced in (1)(a) of this  
 594 section, as used in the most recent unitrust distribution to the  
 595 cemetery licensee.

596 (12) RULEMAKING AUTHORITY. The licensing authority may by rule  
 597 prescribe forms and procedures for applications under and  
 598 implementation of this section. Such rules may require the

599 filing of such additional financial or other information as the  
 600 licensing authority determines is needed for an informed  
 601 decision by the board concerning the application.

602 Section 10. Paragraphs (a) and (b) of subsection (1) and  
 603 subsection (2) of section 497.268, Florida Statutes, are amended  
 604 to read:

605 497.268 Care and maintenance trust fund, percentage of  
 606 payments for burial rights to be deposited.-

607 (1) Each cemetery company shall set aside and deposit in  
 608 its care and maintenance trust fund the following percentages or  
 609 amounts for all sums received from sales of burial rights:

610 (a) For burial rights, 10 percent of all payments  
 611 received; however, for sales made after September 30, 1993, no  
 612 deposit shall be less than \$25 per burial right grave. For each  
 613 burial right which is provided without charge, the deposit to  
 614 the fund shall be \$25.

615 ~~(b) For mausoleums or columbaria, 10 percent of payments~~  
 616 ~~received.~~

617 (2) Deposits to the care and maintenance trust fund shall  
 618 be made by the cemetery company not later than 30 days following  
 619 the close of the calendar month in which any payment was  
 620 received; however, when such payments are received in  
 621 installments, the percentage of the installment payment placed  
 622 in trust must be identical to the percentage which the payment  
 623 received bears to the total cost for the burial rights. Trust  
 624 income may be used to pay for all usual and customary services

625 for the operation of a trust account, including, but not limited  
 626 to: reasonable trustee and custodian fees, investment adviser  
 627 fees, allocation fees, and taxes. If the net income is not  
 628 sufficient to pay the fees and other expenses, the fees and  
 629 other expenses shall be paid by the cemetery company. ~~Capital~~  
 630 ~~gains taxes shall be paid from the corpus.~~

631 Section 11. Section 497.269, Florida Statutes, is amended  
 632 to read:

633 497.269 Care and maintenance trust fund; financial  
 634 reports.—On or before April 1 of each year, the trustee shall  
 635 furnish adequate financial reports that record the fair market  
 636 value with respect to the care and maintenance trust fund  
 637 utilizing forms and procedures specified by rule. However, the  
 638 department may require the trustee to make such additional  
 639 financial reports as it deems necessary. In order to ensure that  
 640 the proper deposits to the trust fund have been made, the  
 641 department shall examine the status of the trust fund of the  
 642 company on a semiannual basis for the first 2 years of the trust  
 643 fund's existence.

644 Section 12. Subsection (4) of section 497.273, Florida  
 645 Statutes, is amended to read:

646 497.273 Cemetery companies; authorized functions.—

647 (4) This chapter does not prohibit the interment or  
 648 entombment of the inurned cremated animal remains of the  
 649 decedent's pet or pets with the decedent's human remains or  
 650 cremated human remains if:

651 (a) The human remains or cremated human remains are not  
 652 commingled with the inurned cremated animal remains; and

653 (b) The interment or entombment with the inurned cremated  
 654 animal remains is with the authorization of a ~~the decedent or~~  
 655 ~~either~~ legally authorized person.

656 Section 13. Subsection (1) of section 497.274, Florida  
 657 Statutes, is amended to read:

658 497.274 Standards for grave spaces.—

659 (1) A standard adult grave space shall measure at least 42  
 660 inches in width and 96 inches in length, except for preinstalled  
 661 vaults in designated areas. For interments, except cremated  
 662 remains, the covering soil shall measure no less than 12 inches  
 663 from the top of the outer burial container at time of interment,  
 664 unless such level of soil is not physically possible. In any  
 665 interment, a legally authorized person ~~the family or next of kin~~  
 666 may waive the 12-inch coverage minimum.

667 Section 14. Subsection (2) of section 497.277, Florida  
 668 Statutes, is amended to read:

669 497.277 Other charges.—Other than the fees for the sale of  
 670 burial rights, burial merchandise, and burial services, no other  
 671 fee may be directly or indirectly charged, contracted for, or  
 672 received by a cemetery company as a condition for a customer to  
 673 use any burial right, burial merchandise, or burial service,  
 674 except for:

675 (2) Charges paid for transferring burial rights from one  
 676 purchaser to another; however, no such fee may exceed \$50,

677 unless a higher fee is approved by rule of the board, based on  
 678 the board's findings of average administrative costs to a  
 679 cemetery of transferring such burial right.

680 Section 15. Paragraph (c) of subsection (2) of section  
 681 497.283, Florida Statutes, is amended to read:

682 497.283 Prohibition on sale of personal property or  
 683 services.-

684 (2)

685 (c) In lieu of delivery as required by paragraph (b), for  
 686 sales to cemetery companies and funeral establishments, and only  
 687 for such sales, the manufacturer of a permanent outer burial  
 688 receptacle which meets standards adopted by rule may elect, at  
 689 its discretion, to comply with the delivery requirements of this  
 690 section by annually submitting for approval pursuant to  
 691 procedures and forms as specified by rule, in writing, evidence  
 692 of the manufacturer's financial responsibility with the  
 693 licensing authority for its review and approval. ~~The standards~~  
 694 ~~and procedures to establish evidence of financial responsibility~~  
 695 ~~shall be those in s. 497.461, with the manufacturer of permanent~~  
 696 ~~outer burial receptacles which meet national industry standards~~  
 697 ~~assuming the same rights and responsibilities as those of a~~  
 698 ~~preneed licensee under s. 497.461.~~

699 Section 16. Subsection (3) of section 497.286, Florida  
 700 Statutes, is amended to read:

701 497.286 Owners to provide addresses; presumption of  
 702 abandonment; abandonment procedures; sale of abandoned unused

703 burial rights.—

704 (3) Upon the occurrence of a presumption of abandonment as  
 705 set forth in subsection (2), a cemetery may file with the  
 706 department a certified notice attesting to the abandonment of  
 707 the burial rights. The notice shall do the following:

708 (a) Describe the burial rights certified to have been  
 709 abandoned;

710 (b) Set forth the name of the owner or owners of the  
 711 burial rights, or if the owner is known to the cemetery to be  
 712 deceased, then the names, if known to the cemetery, of such  
 713 claimants as are heirs at law, next of kin, or specific devisees  
 714 under the will of the owner or the legally authorized person;

715 (c) Detail the facts with respect to the failure of the  
 716 owner or survivors as outlined in this section to keep the  
 717 cemetery informed of the owner's address for a period of 50  
 718 consecutive years or more; and

719 (d) Certify that no burial right has been exercised which  
 720 is held in common ownership with any abandoned burial rights as  
 721 set forth in subsection (2).

722 Section 17. Section 497.371, Florida Statutes, is amended  
 723 to read:

724 497.371 Embalmers; establishment of embalmer apprentice  
 725 program.—The licensing authority adopts rules establishing an  
 726 embalmer apprentice program. An embalmer apprentice may perform  
 727 only those tasks, functions, and duties relating to embalming  
 728 which are performed under the direct supervision of an embalmer

729 who has an active, valid license under s. 497.368 or s. 497.369.  
 730 An embalmer apprentice is ~~shall be~~ eligible to serve in an  
 731 apprentice capacity for a period not to exceed 3 years as may be  
 732 determined by licensing authority rule or for a period not to  
 733 exceed 5 years if the apprentice is enrolled in and attending a  
 734 course in mortuary science or funeral service education at any  
 735 mortuary college or funeral service education college or school.  
 736 An embalmer apprentice shall be issued a license ~~licensed~~ upon  
 737 payment of a licensure fee as determined by licensing authority  
 738 rule but not to exceed \$200. An applicant for the embalmer  
 739 apprentice program may not be issued a license unless the  
 740 licensing authority determines that the applicant is of good  
 741 character and has not demonstrated a history of lack of  
 742 trustworthiness or integrity in business or professional  
 743 matters.

744 Section 18. Paragraph (b) of subsection (1) of section  
 745 497.372, Florida Statutes, is amended to read:

746 497.372 Funeral directing; conduct constituting practice  
 747 of funeral directing.—

748 (1) The practice of funeral directing shall be construed  
 749 to consist of the following functions, which may be performed  
 750 only by a licensed funeral director:

751 (b) Planning or arranging, on an at-need basis, the  
 752 details of funeral services, embalming, cremation, or other  
 753 services relating to the final disposition of human remains,  
 754 including the removal of such remains from the state, ~~with the~~

755 ~~family or friends of the decedent or any other person~~  
 756 ~~responsible for such services;~~ setting the time of the services;  
 757 establishing the type of services to be rendered; acquiring the  
 758 services of the clergy; and obtaining vital information for the  
 759 filing of death certificates and obtaining of burial transit  
 760 permits.

761 Section 19. Subsection (4) of section 497.381, Florida  
 762 Statutes, is amended to read:

763 497.381 Solicitation of goods or services.—

764 (4) At-need solicitation of funeral merchandise or  
 765 services is prohibited. A ~~No~~ funeral director or direct disposer  
 766 or her or his agent or representative may not contact the  
 767 legally authorized person or family ~~or next of kin of a deceased~~  
 768 ~~person~~ to sell services or merchandise unless the funeral  
 769 director or direct disposer or her or his agent or  
 770 representative has been initially called or contacted by the  
 771 legally authorized person or family ~~or next of kin of such~~  
 772 ~~person~~ and requested to provide her or his services or  
 773 merchandise.

774 Section 20. Paragraph (c) of subsection (2) of section  
 775 497.452, Florida Statutes, is amended to read:

776 497.452 Preneed license required.—

777 (2)

778 ~~(c) The provisions of paragraph (a) do not apply to any~~  
 779 ~~Florida corporation existing under chapter 607 acting as a~~  
 780 ~~servicing agent hereunder in which the stock of such corporation~~

781 ~~is held by 100 or more persons licensed pursuant to part III of~~  
 782 ~~this chapter, provided no one stockholder holds, owns, votes, or~~  
 783 ~~has proxies for more than 5 percent of the issued stock of such~~  
 784 ~~corporation; provided the corporation has a blanket fidelity~~  
 785 ~~bond, covering all employees handling the funds, in the amount~~  
 786 ~~of \$50,000 or more issued by a licensed insurance carrier in~~  
 787 ~~this state; and provided the corporation processes the funds~~  
 788 ~~directly to and from the trustee within the applicable time~~  
 789 ~~limits set forth in this chapter. The department may require any~~  
 790 ~~person claiming that the provisions of this paragraph exempt it~~  
 791 ~~from the provisions of paragraph (a) to demonstrate to the~~  
 792 ~~satisfaction of the department that it meets the requirements of~~  
 793 ~~this paragraph.~~

794 Section 21. Subsections (1) and (3) of section 497.454,  
 795 Florida Statutes, are amended to read:

796 497.454 Approval of preneed contract and related forms.—

797 (1) Preneed contract forms and related forms shall be  
 798 filed with and approved by the licensing authority before ~~prior~~  
 799 ~~to~~ use, pursuant to procedures specified by rule. The licensing  
 800 authority may not approve any electronic or paper preneed  
 801 contract ~~form~~ that does not provide for sequential prenumbering  
 802 thereon.

803 ~~(3) Specific disclosure regarding the preneed licensee's~~  
 804 ~~ability to select either trust funding or the financial~~  
 805 ~~responsibility alternative as set forth in s. 497.461 in~~  
 806 ~~connection with the receipt of preneed contract proceeds is~~

807 ~~required in the preneed contract.~~

808 Section 22. Subsections (2), (7), and (8) of section  
809 497.456, Florida Statutes, are amended to read:

810 497.456 Preneed Funeral Contract Consumer Protection Trust  
811 Fund.—

812 (2) Within 60 days after the end of each calendar quarter,  
813 for each preneed contract written during the quarter and not  
814 canceled within 30 days after the date of the execution of the  
815 contract, each preneed licensee, whether funding preneed  
816 contracts by the sale of insurance or by establishing a trust  
817 pursuant to s. 497.458 or s. 497.464, shall remit the sum of  
818 \$2.50 for each preneed contract having a purchase price of  
819 \$1,500 or less, and the sum of \$5 for each preneed contract  
820 having a purchase price in excess of \$1,500; and each preneed  
821 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum  
822 of \$5 for each preneed contract having a purchase price of  
823 \$1,500 or less, and the sum of \$10 for each preneed contract  
824 having a purchase price in excess of \$1,500.

825 (7) In any situation in which a delinquency proceeding has  
826 not commenced, the licensing authority may, in its discretion,  
827 use the trust fund for the purpose of providing restitution to  
828 any consumer, owner, or beneficiary of a preneed contract or  
829 similar regulated arrangement under this chapter entered into  
830 after June 30, 1977. If, after investigation, the licensing  
831 authority determines that a preneed licensee has breached a  
832 preneed contract by failing to provide benefits or an

833 appropriate refund, or that a provider, who is a former preneed  
 834 licensee or an establishment which has been regulated under this  
 835 chapter, has sold a preneed contract and has failed to fulfill  
 836 the arrangement or provide the appropriate refund, and such  
 837 preneed licensee or provider does not provide or does not  
 838 possess adequate funds to provide appropriate refunds, payments  
 839 from the trust fund may be authorized by the licensing  
 840 authority. In considering whether payments shall be made or when  
 841 considering who will be responsible for such payments, the  
 842 licensing authority shall consider whether the preneed licensee  
 843 or previous provider has been acquired by a successor who is or  
 844 should be responsible for the liabilities of the defaulting  
 845 entity. With respect to preneed contracts funded by life  
 846 insurance, payments from the fund shall be made: if the insurer  
 847 is insolvent, but only to the extent that funds are not  
 848 available through the liquidation proceeding of the insurer; or  
 849 if the preneed licensee is unable to perform under the contract  
 850 and the insurance proceeds are not sufficient to cover the cost  
 851 of the merchandise and services contracted for. In no event  
 852 shall the licensing authority approve payments in excess of the  
 853 insurance policy limits unless it determines that at the time of  
 854 sale of the preneed contract, the insurance policy would have  
 855 paid for the services and merchandise contracted for. Such  
 856 monetary relief shall be in an amount as the licensing authority  
 857 may determine and shall be payable in such manner and upon such  
 858 conditions and terms as the licensing authority may prescribe.

859 | However, with respect to preneed contracts to be funded pursuant  
 860 | to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any  
 861 | restitution made pursuant to this subsection may ~~shall~~ not  
 862 | exceed, as to any single contract or arrangement, the lesser of  
 863 | the gross amount paid under the contract or 4 percent of the  
 864 | uncommitted assets of the trust fund. With respect to preneed  
 865 | contracts funded by life insurance policies, any restitution may  
 866 | ~~shall~~ not exceed, as to any single contract or arrangement, the  
 867 | lesser of the face amount of the policy, the actual cost of the  
 868 | arrangement contracted for, or 4 percent of the uncommitted  
 869 | assets of the trust fund. The total of all restitutions made to  
 870 | all applicants under this subsection in a single fiscal year may  
 871 | ~~shall~~ not exceed the greater of 30 percent of the uncommitted  
 872 | assets of the trust fund as of the end of the most recent fiscal  
 873 | year or \$120,000. The department may use moneys in the trust  
 874 | fund to contract with independent vendors pursuant to chapter  
 875 | 287 to administer the requirements of this subsection.

876 |         (8) All moneys deposited in the Preneed Funeral Contract  
 877 | Consumer Protection Trust Fund together with all accumulated  
 878 | appreciation ~~income~~ shall be used only for the purposes  
 879 | expressly authorized by this chapter and may ~~shall~~ not be  
 880 | subject to any liens, charges, judgments, garnishments, or other  
 881 | creditor's claims against the preneed licensee, any trustee  
 882 | utilized by the preneed licensee, any company providing a surety  
 883 | bond as specified in this chapter, or any purchaser of a preneed  
 884 | contract. No preneed contract purchaser shall have any vested

885 rights in the trust fund.

886 Section 23. Paragraphs (a), (b), (d), (f), and (j) of  
 887 subsection (1), paragraph (a) of subsection (3), subsection (4),  
 888 paragraphs (a) and (c) of subsection (5), and subsections (6),  
 889 (7), (8), and (9) of section 497.458, Florida Statutes, are  
 890 amended to read:

891 497.458 Disposition of proceeds received on contracts.—

892 (1)(a) Any person who is paid, collects, or receives funds  
 893 under a preneed contract for funeral services or merchandise or  
 894 burial services or merchandise shall deposit an amount at least  
 895 equal to the sum of 70 percent of the purchase price collected  
 896 for all services sold and facilities rented; 100 percent of the  
 897 purchase price collected for all cash advance items sold; and 30  
 898 percent of the purchase price collected ~~or 110 percent of the~~  
 899 ~~wholesale cost, whichever is greater,~~ for each item of  
 900 merchandise sold. The board may, by rule, specify criteria for  
 901 the classification of items sold in a preneed contract as  
 902 services, merchandise, or cash advances.

903 ~~(b) The method of determining wholesale cost shall be~~  
 904 ~~established by rule of the licensing authority and shall be~~  
 905 ~~based upon the preneed licensee's stated wholesale cost for the~~  
 906 ~~12-month period beginning July 1 during which the initial~~  
 907 ~~deposit to the preneed trust fund for the preneed contract is~~  
 908 ~~made.~~

909 (c) ~~(d)~~ The trustee shall take title to the property  
 910 conveyed to the trust for the purpose of investing, protecting,

911 and conserving it for the preneed licensee; collecting income;  
 912 and distributing the fair market value ~~principal and income~~ as  
 913 prescribed in this chapter. The preneed licensee is prohibited  
 914 from sharing in the discharge of these responsibilities, except  
 915 that the preneed licensee may request the trustee to invest in  
 916 tax-free investments and may appoint an adviser to the trustee.  
 917 The licensing authority may adopt rules limiting or otherwise  
 918 specifying the degree to which the trustee may rely on the  
 919 investment advice of an investment adviser appointed by the  
 920 preneed licensee. The licensing authority may adopt rules  
 921 limiting or prohibiting payment of fees by the trust to  
 922 investment advisors that are employees or principals of the  
 923 licensee to whom the trust fund relates.

924 (e) ~~(f)~~ The deposited funds shall be held in trust, both as  
 925 to principal and any change in fair market value ~~income earned~~  
 926 thereon, and shall remain intact, except that the cost of the  
 927 operation of the trust or trust account authorized by this  
 928 section may be deducted from the income earned thereon.

929 (1) Beginning April 1, 2018, and on or before each April 1  
 930 thereafter, the trustee shall furnish the department with an  
 931 annual report regarding each preneed licensee trust account held  
 932 by the trustee at any time during the previous calendar year.  
 933 The report shall state the name and address of the trustee; the  
 934 name, address, and license number of the licensee to whom the  
 935 report relates; the trust account number; the beginning and  
 936 ending trust balance; and, as may be specified by department

937 rule, a list of receipts showing the date and amount of any  
 938 disbursement. The report must be signed by the trustee's account  
 939 manager for the trust account. The trustee shall submit the  
 940 report in a format and pursuant to procedures specified by  
 941 department rule.

942 (3) (a) The trustee shall make regular valuations of assets  
 943 it holds in trust and provide a fair market value report of such  
 944 valuations to the preneed licensee at least quarterly.

945 (4) The licensing authority may adopt rules exempting from  
 946 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria  
 947 established in such rule, the investment of trust funds in  
 948 investments, such as widely and publicly traded stocks and  
 949 bonds, notwithstanding that the licensee, its principals, or  
 950 persons related by blood or marriage to the licensee or its  
 951 principals have an interest by investment in the same entity,  
 952 where neither the licensee, its principals, or persons related  
 953 by blood or marriage to the licensee or its principals have the  
 954 ability to control the entity invested in, and it would be in  
 955 the interest of the preneed contract holders whose contracts are  
 956 secured by the trust funds to allow the investment.

957 (5) The trustee of the trust established pursuant to this  
 958 section shall only have the power to:

959 (a) Invest in investments as prescribed in s. 518.11  
 960 ~~215.47~~ and exercise the powers set forth in part VIII of chapter  
 961 736, provided that life insurance policies or annuity contracts  
 962 shall not be allowable investments or assets by or of the trust,

963 and real estate shall not comprise more than 25% of the trust  
 964 assets; provided further that the licensing authority may by  
 965 order require the trustee to liquidate or dispose of any  
 966 investment within 30 days after such order, or within such other  
 967 times as the order may direct. The licensing authority may issue  
 968 such order if it determines that the investment violates any  
 969 provision of this chapter or is not in the best interests of the  
 970 preneed contract holders whose contracts are secured by the  
 971 trust funds.

972 (c) Commingle the property of the trust with the property  
 973 of any other trust established pursuant to this chapter and make  
 974 corresponding allocations and divisions of assets, liabilities,  
 975 income, and expenses, and capital gains and losses.

976 ~~(6) The preneed licensee, at her or his election, shall~~  
 977 ~~have the right and power, at any time, to revest in it title to~~  
 978 ~~the trust assets, or its pro rata share thereof, provided it has~~  
 979 ~~complied with s. 497.461.~~

980 ~~(7) Notwithstanding anything contained in this chapter to~~  
 981 ~~the contrary, the preneed licensee, via its election to sell or~~  
 982 ~~offer for sale preneed contracts subject to this section, shall~~  
 983 ~~represent and warrant, and is hereby deemed to have done such,~~  
 984 ~~to all federal and Florida taxing authorities, as well as to all~~  
 985 ~~potential and actual preneed contract purchasers, that:~~

986 ~~(a) Section 497.461 is a viable option available to it at~~  
 987 ~~any and all relevant times;~~

988 ~~(b) Section 497.462 is a viable option available to it at~~

989 ~~any and all relevant times for contracts written prior to July~~  
 990 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

991 ~~(c) For any preneed licensee authorized to do business in~~  
 992 ~~this state that has total bonded liability exceeding \$100~~  
 993 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~  
 994 ~~at any and all relevant times for contracts written prior to~~  
 995 ~~December 31, 2004, for funds not held in trust as of July 1,~~  
 996 ~~2001.~~

997 ~~(8) If in the preneed licensee's opinion it does not have~~  
 998 ~~the ability to select the financial responsibility alternative~~  
 999 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~  
 1000 ~~have the right to sell or solicit preneed contracts.~~

1001 (6)~~(9)~~ The amounts required to be placed in trust by this  
 1002 section for contracts previously entered into shall be as  
 1003 follows:

1004 (a) For contracts entered into before October 1, 1993, the  
 1005 trust amounts as amended by s. 6, chapter 83-316, Laws of  
 1006 Florida, shall apply.

1007 (b) For contracts entered into on or after October 1,  
 1008 1993, the trust amounts as amended by s. 98, chapter 93-399,  
 1009 Laws of Florida, shall apply.

1010 Section 24. Paragraph (a) of subsection (6) of section  
 1011 497.459, Florida Statutes, is amended to read:

1012 497.459 Cancellation of, or default on, preneed  
 1013 contracts.—

1014 (6) OTHER PROVISIONS.—

1015 (a) All preneed contracts are cancelable and revocable as  
 1016 provided in this section, provided that a preneed contract does  
 1017 not restrict any contract purchaser who is the beneficiary of  
 1018 the preneed contract and who is a qualified applicant for, or a  
 1019 recipient of, supplemental security income, temporary cash  
 1020 assistance, or Medicaid from making her or his contract  
 1021 irrevocable. A preneed contract that is made irrevocable  
 1022 pursuant to this section may not be canceled during the life or  
 1023 after the death of the contract purchaser or beneficiary as  
 1024 described in this section. Any unexpended monies paid on an  
 1025 irrevocable contract shall be remitted to the Agency for Health  
 1026 Care Administration for deposit into the Medical Care Trust Fund  
 1027 after final disposition of the beneficiary.

1028 Section 25. Section 497.460, Florida Statutes, is amended  
 1029 to read:

1030 497.460 Payment of funds upon death of named beneficiary.—  
 1031 Disbursements of funds discharging any preneed contract  
 1032 fulfilled after September 30, 1993, shall be made by the trustee  
 1033 to the preneed licensee upon receipt of a certified copy of the  
 1034 death certificate of the contract beneficiary or satisfactory  
 1035 evidence as established by rule of the licensing authority that  
 1036 the preneed contract has been performed in whole or in part.  
 1037 However, if the contract is only partially performed, the  
 1038 disbursement shall only cover the fair market value of that  
 1039 portion of the contract performed. In the event of any contract  
 1040 default by the contract purchaser, or in the event that the

1041 funeral merchandise or service or, burial merchandise or service  
 1042 contracted for is not provided or is not desired by the legally  
 1043 authorized person heirs or personal representative of the  
 1044 ~~contract beneficiary~~, the trustee shall return, within 30 days  
 1045 after its receipt of a written request therefor, funds paid on  
 1046 the contract to the preneed licensee or to its assigns, subject  
 1047 to the ~~provisions of s. 497.459.~~

1048 Section 26. Section 497.461, Florida Statutes, is  
 1049 repealed.

1050 Section 27. The repeal of s. 497.461, Florida Statutes, by  
 1051 this act does not apply to any surety bonds in force under s.  
 1052 497.461 as of July 1, 2016, but no additional preneed contracts  
 1053 shall be added under such surety bonds after July 1, 2016.

1054 Section 28. Subsection (2), paragraph (a) of subsection  
 1055 (3), and subsections (7) and (10) of section 497.462, Florida  
 1056 Statutes, are amended to read:

1057 497.462 Other alternatives to deposits under s. 497.458.—

1058 ~~(2) Upon prior approval by the licensing authority, the~~  
 1059 ~~preneed licensee may file a letter of credit with the licensing~~  
 1060 ~~authority in lieu of a surety bond. Such letter of credit must~~  
 1061 ~~be in a form, and is subject to terms and conditions, prescribed~~  
 1062 ~~by the board. It may be revoked only with the express approval~~  
 1063 ~~of the licensing authority.~~

1064 (2)-(3)(a) A buyer of preneed merchandise or services who  
 1065 does not receive such services or merchandise due to the  
 1066 economic failure, closing, or bankruptcy of the preneed licensee

1067 must file a claim with the surety as a prerequisite to payment  
 1068 of the claim and, if the claim is not paid, may bring an action  
 1069 based on the bond and recover against the surety. ~~In the case of~~  
 1070 ~~a letter of credit or cash deposit that has been filed with the~~  
 1071 ~~licensing authority, the buyer may file a claim with the~~  
 1072 ~~licensing authority.~~

1073 (6)~~(7)~~ Any preneed contract which promises future delivery  
 1074 of merchandise at no cost constitutes a paid-up contract.  
 1075 Merchandise which has been delivered is not covered by the  
 1076 required performance bond ~~or letter of credit~~ even though the  
 1077 contract is not completely paid. The preneed licensee may not  
 1078 cancel a contract unless the purchaser is in default according  
 1079 to the terms of the contract and subject to the requirements of  
 1080 s. 497.459. A contract sold, discounted, and transferred to a  
 1081 third party constitutes a paid-up contract for the purposes of  
 1082 the performance bond ~~or letter of credit~~.

1083 (9)~~(10)~~ The licensing authority may adopt forms and rules  
 1084 necessary to implement this section, including, but not limited  
 1085 to, rules which ensure that the surety bond provides ~~and line of~~  
 1086 ~~credit~~ provide liability coverage for preneed merchandise and  
 1087 services.

1088 Section 29. Paragraphs (c) and (f) of subsection (1) of  
 1089 section 497.464, Florida Statutes, are amended to read:

1090 497.464 Alternative preneed contracts.—

1091 (1) Nothing in this chapter shall prevent the purchaser  
 1092 and the preneed licensee from executing a preneed contract upon

1093 the terms stated in this section. Such contracts shall be  
 1094 subject to ~~all provisions of~~ this chapter except:

1095 ~~(e) Section 497.458(1), (3), and (6).~~  
 1096 ~~(f) Section 497.461.~~

1097 Section 30. Subsection (2) and paragraph (c) of subsection  
 1098 (9) of section 497.465, Florida Statutes, are amended to  
 1099 read:

1100 497.465 Inactive, surrendered, and revoked preneed  
 1101 licensees.—

1102 (2) A preneed licensee shall cease all preneed sales to  
 1103 the public upon becoming inactive. Upon becoming inactive, the  
 1104 preneed licensee shall collect and deposit into the trust all of  
 1105 the funds received from ~~into trust all of the funds paid toward~~  
 1106 preneed contracts sold before ~~prior~~ to becoming inactive.

1107 (9) The licensing authority may adopt rules for the  
 1108 implementation of this section, for the purpose of ensuring a  
 1109 thorough review and investigation of the status and condition of  
 1110 the preneed licensee's business affairs for the protection of  
 1111 the licensee's preneed customers. Such rules may include:

1112 (c) Requirements for submission of ~~unaudited or audited~~  
 1113 financial statements, as the licensing authority deems  
 1114 advisable.

1115 Section 31. Paragraph (b) of subsection (1) of section  
 1116 497.601, Florida Statutes, is amended to read:

1117 497.601 Direct disposition; duties.—

1118 (1) Those individuals licensed as direct disposers may

1119 perform only those functions set forth below:

1120 (b) Secure pertinent information from a legally authorized  
 1121 person ~~the decedent's next of kin~~ in order to complete the death  
 1122 certificate and to file for the necessary permits for ~~direct~~  
 1123 disposition.

1124  
 1125 Section 32. Subsection (1) of section 497.607, Florida  
 1126 Statutes, is amended, present subsections (2), (3), and (4) of  
 1127 that section are redesignated as subsections (3), (4), and (5),  
 1128 respectively, and a new subsection (2) is added to that section,  
 1129 to read:

1130 497.607 Cremation; procedure required.—

1131 (1) At the time of the arrangement for a cremation  
 1132 performed by any person licensed pursuant to this chapter, the  
 1133 legally authorized person contracting for cremation services  
 1134 shall be required to designate her or his intentions with  
 1135 respect to the disposition of the cremated remains of the  
 1136 deceased in a signed declaration of intent which shall be  
 1137 provided by and retained by the funeral or direct disposal  
 1138 establishment. A cremation may not be performed until a legally  
 1139 authorized person gives written authorization, which may include  
 1140 the declaration of intent to dispose of the cremated remains,  
 1141 for such cremation. The cremation must be performed within 48  
 1142 hours after a specified time which has been agreed to in writing  
 1143 by the person authorizing the cremation.

1144 (2) Cremated remains are not property, as defined in s.

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1145 731.201(32), and are not subject to ownership or court-ordered  
 1146 partition. A division of cremated remains requires the consent  
 1147 of the legally authorized person who approved the cremation or,  
 1148 if the legally authorized person is the decedent, the next  
 1149 legally authorized person pursuant to s. 497.005(40). A dispute  
 1150 regarding the division of cremated remains shall be resolved by  
 1151 a court of competent jurisdiction.

1152 Section 33. This act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 577 Liability Insurance Coverage  
**SPONSOR(S):** Lee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd 	Luczynski 
2) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Liability insurance is a form of casualty insurance covering the legal obligations of the insured for bodily injuries or property damage caused to another person. When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of the relevant coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Section 627.4137, F.S., allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for covering the insured.

Within 30 days of receipt of the written request, the insurer must disclose the following information regarding every known policy that may be related to the claim:

- The name of the insurer.
- The name of each insured.
- The limits of the liability coverage.
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- A copy of the policy.

The information must be provided under oath by a corporate officer, claims manager, or claims superintendent of the insurer. This sworn statement of coverage information must be amended upon the discovery of additional material facts, such as additional policies or defenses that were not initially identified.

The bill adds "licensed company adjusters" to the list of individuals that may issue a sworn statement detailing the required coverage information on behalf of the insurer.

The bill has no impact on state and local governments. The bill likely has a positive impact on the private sector.

The bill is effective on July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Liability insurance is "insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as a part of a liability insurance contract."<sup>1</sup> It is a form of casualty insurance<sup>2</sup> covering the legal obligations of the insured for bodily injuries or property damage caused to another person.

When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. However, the injured person usually has no knowledge of or information about the insurance coverage of the person responsible for the loss. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Section 627.4137, F.S., allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request for disclosure, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for liability insurance coverage of the insured.

Within 30 days of receipt of the written request,<sup>3</sup> the insurer must provide the following information regarding every known policy:<sup>4</sup>

- The name of the insurer.
- The name of each insured.
- The limits of the liability coverage.
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- A copy of the policy.

The information must be provided under oath by a corporate officer, claims manager, or claims superintendent of the insurer. This sworn statement must be amended upon the discovery of additional material facts, such as additional policies or defenses that were not initially identified. Willful violation of the requirements of s. 627.4137, F.S., is grounds for an administrative penalty against individuals holding one of the various insurance licenses issued by the Department of Financial Services.<sup>5</sup>

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<sup>1</sup> s. 624.605(1)(b), F.S.

<sup>2</sup> s. 624.605, F.S. The following forms of insurance are also casualty insurance: vehicle, workers' compensation and employer's liability, burglary and theft, personal property floaters, glass, boiler and machinery, leakage and fire extinguishing equipment, credit, credit property, malpractice, animal, elevator, entertainments, failure of certain institutions to record documents, failure to file certain personal property instruments, debt cancellation products, and, when not contrary to law or public policy or within any other line of insurance, any insurance providing coverage against liabilities for loss or damage to person or property. Medical, hospital, surgical, and funeral benefits covered under policies for vehicle, liability, burglary and theft, boiler and machinery, or elevator are deemed to be casualty insurance and is not subject to the provisions of the Insurance Code applicable to life and health insurance. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

<sup>3</sup> Written requests made of a self-insured corporation must be sent by certified mail to the registered agent of the entity that is obligated to make the disclosures required by statute. s. 627.4137(3), F.S.

<sup>4</sup> This includes policies for excess or umbrella insurance applicable to the insured's liability coverages. s. 627.4137(1), F.S.

<sup>5</sup> ss. 626.611 and 626.621, F.S.

In addition to corporate officers, claims managers, and claims superintendents, the bill allows “licensed company adjusters”<sup>6</sup> to issue a sworn statement detailing the required coverage information.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 627.4137, F.S., relating to disclosure of certain information required.

**Section 2:** Provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Liability insurers could experience increased efficiency by allowing the adjuster with direct responsibility for a claim file or policy to perform the required information disclosure consistent with the requirements of the bill, rather than more senior, and possibly remotely located, personnel.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

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<sup>6</sup> The term “licensed company adjuster” is not defined and is not used as a discreet term in the Insurance Code. The closest analogous term in the Insurance Code is a “company employee adjuster,” which “means a person licensed as an all-lines adjuster who is appointed and employed on an insurer’s staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.” s. 626.856, F.S.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The term "licensed company adjuster" is not defined and is not used as a discreet term in the Insurance Code. The closest analogous term in the Insurance Code is a "company employee adjuster," which "means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage." s. 626.856, F.S.

Section 626.9372, F.S., contains as substantively comparable provision that requires a surplus lines insurer to disclose the same coverage information in the same way as s. 627.4137, F.S. The only substantive difference is that the surplus lines liability insurer must issue its disclosure within 60 days of a written request from the claimant. For purposes of consistency, it may be advisable to amend s. 626.9372, F.S., so that the same information response requirements apply to insurers admitted in the state and surplus lines insurers.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to liability insurance coverage;  
 3           amending s. 627.4137, F.S.; adding licensed company  
 4           adjusters to the list of persons who may respond to a  
 5           claimant's written request for information relating to  
 6           liability insurance coverage; providing an effective  
 7           date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Subsection (1) of section 627.4137, Florida  
 12   Statutes, is amended to read:

13           627.4137 Disclosure of certain information required.—

14           (1) Each insurer that provides ~~which does~~ or may provide  
 15   liability insurance coverage to pay all or a portion of a any  
 16   claim that ~~which~~ might be made shall provide, within 30 days  
 17   after ~~of~~ the written request of the claimant, a statement, under  
 18   oath, of a corporate officer, ~~or~~ the insurer's claims manager or  
 19   superintendent, or a licensed company adjuster setting forth the  
 20   following information with regard to each known policy of  
 21   insurance, including excess or umbrella insurance:

- 22           (a) The name of the insurer.
- 23           (b) The name of each insured.
- 24           (c) The limits of the liability coverage.
- 25           (d) A statement of any policy or coverage defense that the  
 26   ~~which such~~ insurer reasonably believes is available to the ~~such~~

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27 | insurer at the time of filing such statement.

28 |       (e) A copy of the policy.

29 |

30 | In addition, the insured, or her or his insurance agent, upon  
 31 | written request of the claimant or the claimant's attorney,  
 32 | shall disclose the name and coverage of each known insurer to  
 33 | the claimant and shall forward such request for information as  
 34 | required by this subsection to all affected insurers. The  
 35 | insurer shall then supply the information required in this  
 36 | subsection to the claimant within 30 days after ~~of~~ receipt of  
 37 | such request.

38 |       Section 2. This act shall take effect July 1, 2016.

**Insurance & Banking Subcommittee**

**HB 577 by Lee  
Liability Insurance Coverage**

**AMENDMENT SUMMARY  
December 2, 2015**

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**Amendment 1 by Rep. Lee (Line 19):** The amendment replaces the term “licensed company adjuster,” which is not defined in statute, with the term “company employee adjuster,” which is defined in statute.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Lee offered the following:

4  
 5 **Amendment (with title amendment)**  
 6 Remove line 19 and insert:  
 7 superintendent, or a company employee adjuster setting forth the

8  
 9 -----

10 **T I T L E A M E N D M E N T**

11 Remove lines 3-4 and insert:  
 12 amending s. 627.4137, F.S.; adding company employee adjusters to  
 13 the list of persons who may respond to a



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 695 Title Insurance  
**SPONSOR(S):** Boyd  
**TIED BILLS:** IDEN./SIM. BILLS: SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd 	Luczynski 
2) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Purchasers of real property and lenders utilize title insurance to protect their interests against claims by others to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the Insurance Code. Among other things, Florida law sets a statutory reserve for title insurers based on the amount of surplus held by the insurer. Title insurers with surplus under \$50 million must put \$0.30 for every \$1,000 of risk they retain into reserve. Those with \$50 million or more in surplus must put 6.5 percent of premium into reserve. Both must supplement their reserve with any additional amount deemed necessary by a qualified actuary. It is notable that the two calculations are based on different factors, the first on risk retained and the second on premiums written. For smaller transactions, there is little difference in the amounts that must be reserved. However, on larger value transactions, there can be significantly lower reserve requirements applicable to the title insurers with \$50 million or more in surplus. These larger surplus insurers also benefit from a reserve retention schedule that releases the reserve earlier than for the smaller surplus insurers.

Florida insurers are permitted to arrange themselves into insurance holding companies, also known as insurance holding company systems. An insurance holding company system consists of two or more affiliated entities, one of which is an insurer.

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers. These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The various rating companies use similar terminology, but each has a proprietary method to establish their rating results.

The bill allows a title insurer that is a member of an insurance holding company system that has \$1 billion or more in surplus to set its reserves in the same manner as a title insurer that on its own has \$50 million or more in surplus. However, this exception will only be available if the insurance holding company system has a financial strength rating of "A-" or better from the A.M. Best Company. This allows a smaller title insurer with access to capital from its holding company to set reserves in the same way as a larger title insurer. This sets lower reserve amounts on higher value policies and allows the reserve to be released earlier. Also, the bill allows title insurers that move their domicile to Florida to release reserves consistent with Florida law, rather than maintaining and releasing their reserves held at the time of domestication pursuant to the law of their former state.

The bill has no impact on local government. It has an indeterminate negative impact on the Office of Insurance Regulation. It has an indeterminate positive impact on the private sector.

The bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.<sup>1</sup> Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty by the title insurer to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.<sup>2</sup>

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the Insurance Code.<sup>3</sup> Among other things, Florida law requires title insurers to meet specific reserve requirements.<sup>4</sup> An insurer's reserve is a fund of capital kept by an insurer to meet its best estimate of known or expected losses for claims on policies it has written or assumed.<sup>5, 6</sup> Subsection 625.111(a), F.S., sets the statutory reserve for title insurers based on the amount of surplus<sup>7</sup> held by the insurer. For title insurers with less than \$50 million in surplus, the insurer must maintain the following reserve:<sup>8</sup>

- 30 cents for every \$1,000 of net retained liability,<sup>9</sup> plus
- Any additional amount deemed necessary by a qualified actuary<sup>10</sup> to meet known and anticipated losses.

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<sup>1</sup> s. 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

<sup>2</sup> See, e.g., AMERICAN LAND TITLE ASSOCIATION (ALTA), <http://www.alta.org> (last visited Nov. 25, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies. AMERICAN LAND TITLE ASSOCIATION, Title Insurance: A Comprehensive Overview, <http://www.alta.org/about/TitleInsuranceOverview.pdf> (last visited Nov. 25, 2015).

<sup>3</sup> Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

<sup>4</sup> s. 625.111, F.S.

<sup>5</sup> INSURANCE INFORMATION INSTITUTE, *Glossary*, <http://www.iii.org/services/glossary> (last viewed Nov. 25, 2015).

<sup>6</sup> According to financial data published by the ALTA, nationwide aggregate statutory surplus is approximately \$3.81 billion and statutory reserve is \$3.76 billion. AMERICAN LAND TITLE ASSOCIATION (ALTA), *Industry Financial Data*, <http://www.alta.org/industry/financial.cfm> (last visited Nov. 25, 2015).

<sup>7</sup> "Surplus" is the remainder after an insurer's liabilities are subtracted from its assets. It is the financial cushion that protects policyholders in case of unexpectedly high claims. INSURANCE INFORMATION INSTITUTE, *Glossary*, <http://www.iii.org/services/glossary> (last viewed Nov. 25, 2015).

<sup>8</sup> For unearned premiums on policies written or assumed before July 1, 1999, the amount of reserve established on June 30, 1999, applies. s. 625.111(1)(a), F.S. This is in addition to any additional amount deemed necessary by a qualified actuary. s. 625.111(1)(d), F.S.

<sup>9</sup> "Net retained liability" means the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any. s. 625.111(6)(b), F.S.

<sup>10</sup> "Qualified actuary" means a person who is, as detailed in the National Association of Insurance Commissioners' Annual Statement Instructions: 1. A member in good standing of the Casualty Actuarial Society; 2. A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or 3. A person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days before filing its annual statement, the insurer must request that the person be deemed qualified and that request must be approved or denied. The request must

For title insurers with \$50 million or more in surplus, the insurer must maintain the following reserve:

- At least 6.5 percent of direct written premiums, plus other income and reinsurance assumed, plus
- Any additional amount deemed necessary by a qualified actuary to meet known and anticipated losses.<sup>11</sup>

For title insurers from other states that choose to move their operations to Florida and become domestic title insurers in this state, the reserve requirement for reserves held at the time of the change of state is based upon the law of their prior state.<sup>12</sup>

In the two statutory reserve categories described above, the amount of the reserve is tied to a different base. For the smaller surplus insurers, it is a percent of the face value of the policy. For the larger surplus insurers, it is a percentage of the premium.<sup>13</sup> The following examples highlight the difference in reserve requirements based on the insurer's level of surplus:<sup>14</sup>

**Example A:** an owner's title insurance policy on a \$750,000 real estate transaction.

*Statutory reserve for an insurer with less than \$50 million in surplus (based on retained liability):*

Net retained liability: \$750,000 (if no premium is ceded through reinsurance)

Statutory reserve:  $(\$750,000 / 1,000) \times \$0.30 = \mathbf{\$225}$

*Statutory reserve for an insurer with \$50 million or more in surplus (based on premium):*

Calculated premium: \$3,825

Statutory reserve:  $\$3,825 \times 6.5\% = \mathbf{\$248.63}$

**Example B:** an owner's title insurance policy on a \$20,000,000 real estate transaction.

*Statutory reserve for an insurer with less than \$50 million in surplus (based on retained liability):*

Net retained liability: \$20,000,000 (if no premium is ceded through reinsurance)

Statutory reserve:  $(\$20,000,000 / 1,000) \times \$0.30 = \mathbf{\$6,000}$

*Statutory reserve for an insurer with \$50 million or more in surplus (based on premium):*

Calculated premium: \$46,325

Statutory reserve:  $\$46,325 \times 6.5\% = \mathbf{\$3,011.03}$

As illustrated, in Example A the two reserve amounts are similar. The smaller surplus company's reserve requirement is approximately 90 percent of the amount required of the larger surplus company.

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include the National Association of Insurance Commissioners' Biographical Form and a list of all loss reserve opinions issued in the last 3 years by this person. s. 625.111(6)(c), F.S.

<sup>11</sup> s. 625.111(1), F.S.

<sup>12</sup> s. 625.111(3), F.S.

<sup>13</sup> The amount of premium is established by applying the OIR approved title insurance rate to the amount of liability written. The OIR approved rates are found in Rule 69O-186.003, F.A.C.

<sup>14</sup> These examples are based exclusively on the application of the OIR approved rate to a hypothetical real estate property value, exclusive of any premium discounts, credits, or other factors.

In Example B, however, the larger surplus company is only required to reserve about half as much as the smaller surplus company.

The title insurer's premium reserve is released over time based on a schedule set by statute.<sup>15</sup> Since title insurance policies cover an exceptionally long period of risk, the conversion of reserve to surplus occurs over a period of 20 years. The amount released from reserve each year is done quarterly in equal amounts. The statutory reserve release schedule for each of the two sizes of insurer is shown below.

For title insurers with less than \$50 million in surplus, the portion of the reserve based on retained liability is released as follows:<sup>16</sup>

Year(s)	Percent released
1	30%
2	15%
3, 4	10%, each year
5, 6	5%, each year
7, 8	3%, each year
9 through 15	2%, each year
16 through 20	1%, each year

For title insurers with \$50 million or more in surplus, the reserve is released as follows:

Year(s)	Percent released
1	35%
2, 3	15%, each year
4	10%
5, 6, 7	3%, each year
8, 9, 10	2%, each year
11 through 20	1%, each year

The release of reserves by title insurers with \$50 million or more in surplus is somewhat more frontloaded than the other title insurers. They will have released 75 percent of the reserved amount after the first four years where the insurer with less than \$50 million in surplus will have only release 65 percent of the reserve. Following the 15<sup>th</sup> year of release, the two will have released an equal amount of reserve.

### Insurance Holding Companies

Florida insurers are permitted to arrange themselves into insurance holding companies, also known as insurance holding company systems. An insurance holding company system consists of two or more affiliated entities that are subsidiaries of the holding company. One of the members must be an insurer. They are regulated by the OIR under ch. 628, Part IV, F.S. This allows the OIR to have an oversight role in the shared financial risks of the members of the insurance holding company.

### Financial Strength Ratings

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.<sup>17</sup> These financial strength

<sup>15</sup> s. 625.111(2), F.S.

<sup>16</sup> The amount of reserve that is based on the additional amount needed to meet the opinion of the qualified actuary regarding necessary reserves is released on the same schedule as that provided for insurers with \$50 million or more in surplus. s. 625.111(2)(d), F.S.

<sup>17</sup> Financial strength rating organizations include: A.M. Best ([www.ambest.com](http://www.ambest.com)), Fitch ([www.fitchratings.com](http://www.fitchratings.com)), Moody's Investor Services ([www.moodys.com](http://www.moodys.com)), Standard & Poor's ([www.standardandpoors.com](http://www.standardandpoors.com)), and Demotech ([www.demotech.com](http://www.demotech.com)).

ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, one should review the rating organization's own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as "Excellent," and B++ and B+ are described as "Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations.<sup>18</sup> Additionally, an insurer may not be rated by every rating company as some rating companies may focus on particular markets or entities that are not served by the other rating companies.

### **Effect of the Bill**

The bill allows a title insurer that is a member of an insurance holding company system that has \$1 billion or more in surplus to set its reserves in the same manner as a title insurer that on its own has \$50 million or more in surplus. This allows smaller title insurers with access to large amounts of capital to set reserves as if it had a higher surplus of its own. This exception will only be available if the insurance holding company system has a financial strength rating of "A-" or better from the A.M. Best Company.

This has two effects. First, it sets a lower amount of reserve on higher value policies and, second, the insurer's reserve is released earlier. Together, this allows the insurer earlier access to capital by placing funds in surplus, rather than reserves.

Also, the bill allows title insurers that move their domicile to Florida from another state to release reserves consistent with Florida law, rather than requiring release of the predomestication reserves pursuant to the law of their former state.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 625.111, F.S., relating to title insurance reserve.

**Section 2:** Provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The OIR is not currently required to monitor the financial strength rating of a title insurer's holding company. The bill sets reserve requirements for certain title insurers based on the financial strength and surplus size of its insurance holding company. The OIR has not published a bill analysis on this bill. Accordingly, there is no estimate of the impact that this will have on state resources, but it is likely negative.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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<sup>18</sup> See A.M. BEST COMPANY, Guide to Best's Financial Strength Ratings, <http://www.ambest.com/ratings/guide.pdf> (Last viewed Nov. 25, 2015).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill likely has a positive impact on the private sector. It frees up capital that title insurers can use to write additional coverage or make new investments.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to title insurance; amending s.  
 3 625.111, F.S.; revising the reserves that certain  
 4 title insurers must set aside after a certain date;  
 5 revising the manner in which reserves must be  
 6 released; revising reserve requirements for a title  
 7 insurer who transfers domicile to this state;  
 8 providing an effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12 Section 1. Subsections (1) and (3) of section 625.111,  
 13 Florida Statutes, are amended to read:

14 625.111 Title insurance reserve.—In addition to an  
 15 adequate reserve as to outstanding losses relating to known  
 16 claims as required under s. 625.041, a domestic title insurer  
 17 shall establish, segregate, and maintain a guaranty fund or  
 18 unearned premium reserve as provided in this section. The sums  
 19 to be reserved for unearned premiums on title guarantees and  
 20 policies shall be considered and constitute unearned portions of  
 21 the original premiums and shall be charged as a reserve  
 22 liability of the insurer in determining its financial condition.  
 23 Such reserved funds shall be withdrawn from the use of the  
 24 insurer for its general purposes, impressed with a trust in  
 25 favor of the holders of title guarantees and policies, and held  
 26 available for reinsurance of the title guarantees and policies

27 | in the event of the insolvency of the insurer. This section does  
 28 | not preclude the insurer from investing such reserve in  
 29 | investments authorized by law, and the income from such  
 30 | investments shall be included in the general income of the  
 31 | insurer and may be used by such insurer for any lawful purpose.

32 |       (1) For an unearned premium reserve established on or  
 33 | after July 1, 1999, such reserve must be in an amount at least  
 34 | equal to the sum of paragraphs (a), (b), and (d) for title  
 35 | insurers holding less than \$50 million in surplus as to  
 36 | policyholders as of the previous year end and the sum of  
 37 | paragraphs (c) and (d) for title insurers holding \$50 million or  
 38 | more in surplus as to policyholders as of the previous year end  
 39 | or title insurers that are members of an insurance holding  
 40 | company system having \$1 billion or more in surplus as to  
 41 | policyholders and rated "A-" or higher by A.M. Best Company:

42 |       (a) A reserve with respect to unearned premiums for  
 43 | policies written or title liability assumed in reinsurance  
 44 | before July 1, 1999, equal to the reserve established on June  
 45 | 30, 1999, for those unearned premiums with such reserve being  
 46 | subsequently released as provided in subsection (2). For  
 47 | domestic title insurers subject to this section, such amounts  
 48 | shall be calculated in accordance with state law in effect at  
 49 | the time the associated premiums were written or assumed and as  
 50 | amended before July 1, 1999.

51 |       (b) A total amount equal to 30 cents for each \$1,000 of  
 52 | net retained liability for policies written or title liability

53 | assumed in reinsurance on or after July 1, 1999, with such  
 54 | reserve being subsequently released as provided in subsection  
 55 | (2). For the purpose of calculating this reserve, the total of  
 56 | the net retained liability for all simultaneous issue policies  
 57 | covering a single risk shall be equal to the liability for the  
 58 | policy with the highest limit covering that single risk, net of  
 59 | any liability ceded in reinsurance.

60 | (c) On or after January 1, 2014, for title insurers that  
 61 | are members of an insurance holding company system having \$1  
 62 | billion or more in surplus as to policyholders and rated "A-" or  
 63 | higher by A.M. Best Company or title insurers holding \$50  
 64 | million or more in surplus as to policyholders as of the  
 65 | previous year end, a minimum of 6.5 percent of the total of the  
 66 | following:

- 67 | 1. Direct premiums written; and
- 68 | 2. Premiums for reinsurance assumed, plus other income,  
 69 | less premiums for reinsurance ceded as displayed in Schedule P  
 70 | of the title insurer's most recent annual statement filed with  
 71 | the office with such reserve being subsequently released as  
 72 | provided in subsection (2). Title insurers with less than \$50  
 73 | million in surplus as to policyholders that are not members of  
 74 | an insurance holding company system holding \$1 billion or more  
 75 | in surplus as to policyholders and rated "A-" or higher by A.M.  
 76 | Best Company must continue to record unearned premium reserve in  
 77 | accordance with paragraph (b).

78 | (d) An additional amount, if deemed necessary by a

79 | qualified actuary, to be subsequently released as provided in  
80 | subsection (2). Using financial results as of December 31 of  
81 | each year, all domestic title insurers shall obtain a Statement  
82 | of Actuarial Opinion from a qualified actuary regarding the  
83 | insurer's loss and loss adjustment expense reserves, including  
84 | reserves for known claims, incurred but not reported claims, and  
85 | unallocated loss adjustment expenses. The actuarial opinion must  
86 | conform to the annual statement instructions for title insurers  
87 | adopted by the National Association of Insurance Commissioners  
88 | and include the actuary's professional opinion of the insurer's  
89 | reserves as of the date of the annual statement. If the amount  
90 | of the reserve stated in the opinion and displayed in Schedule P  
91 | of the annual statement for that reporting date is greater than  
92 | the sum of the known claim reserve and unearned premium reserve  
93 | as calculated under this section, as of the same reporting date  
94 | and including any previous actuarial provisions added at earlier  
95 | dates, the insurer shall add to the insurer's unearned premium  
96 | reserve an actuarial amount equal to the reserve shown in the  
97 | actuarial opinion, minus the known claim reserve and the  
98 | unearned premium reserve, as of the current reporting date and  
99 | calculated in accordance with this section, but not calculated  
100 | as of any date before December 31, 1999. The comparison shall be  
101 | made using that line on Schedule P displaying the Total Net Loss  
102 | and Loss Adjustment Expense which is comprised of the Known  
103 | Claim Reserve, and any associated Adverse Development Reserve,  
104 | the reserve for Incurred But Not Reported Losses, and

105 Unallocated Loss Adjustment Expenses.

106 (3) If a title insurer that is organized under the laws of  
 107 another state transfers its domicile to this state, the  
 108 statutory or unearned premium reserve shall be the amount  
 109 required by the laws of the state of the title insurer's former  
 110 state of domicile as of the date of transfer of domicile and  
 111 shall be released from reserve over the subsequent 20 years at  
 112 an amortization rate not to exceed the formula in paragraph  
 113 (2)(c) according to the requirements of law in effect in the  
 114 ~~former state at the time of domicile~~. On or after January 1,  
 115 2014, for new business written after the effective date of the  
 116 transfer of domicile to this state, the domestic title insurer  
 117 shall add to and set aside in the statutory or unearned premium  
 118 reserve such amount as provided in subsection (1).

119 Section 2. This act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 699 Reciprocal Insurers  
**SPONSOR(S):** Grant  
**TIED BILLS:** IDEN./SIM. BILLS: SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Peterson <i>KP</i>	Luczynski <i>ML</i>
2) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

A reciprocal insurance company is an unincorporated group of participants, known as subscribers, who share risk equally through a person who is authorized to perform transactions on behalf of the subscribers. In effect, subscribers serve as both the insurer and the insured. Reciprocal insurers can transact any kind of insurance other than life or title.

Under current law, a reciprocal insurer can return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Such distributions cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes. Currently, if a reciprocal insurer wants to make a distribution of surplus to its subscribers, it must establish and maintain subscriber savings accounts.

Under current Florida law, a domestic reciprocal insurer who does not maintain subscriber savings accounts does not have explicit authority to make distributions of surplus to its subscribers.

The bill provides a domestic reciprocal insurer with an additional method by which it can return surplus funds to its subscribers without the requirement to maintain subscriber savings accounts. The bill gives a domestic reciprocal insurer the option of paying to its subscribers up to ten percent of its unassigned funds (surplus), capping distribution at fifty percent of its net income from the previous calendar year. The bill requires the Office of Insurance Regulation to approve in writing such distributions. Further, the distributions cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes. The bill gives a domestic reciprocal insurer the option to return surplus funds to its subscribers without the administrative costs associated with subscriber savings accounts.

The bill does not appear to have a fiscal impact on state government or local governments. The bill may have a positive economic impact on the private sector.

This bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background Information on Reciprocal Insurance

Reciprocal insurance is a risk-pooling alternative to stock or mutual insurance.<sup>1</sup> Reciprocal insurance involves an exchange of reciprocal agreements of indemnity among participants who are known as “subscribers.”<sup>2</sup> The subscribers generally have something in common; for example, USAA is a well-known reciprocal insurer for U.S. military service members and their families.<sup>3</sup>

The agreements of indemnity are exchanged through an attorney-in-fact, whose powers are set forth by the subscribers.<sup>4</sup> “In general, the attorney in fact manages the reciprocal’s finances and handles underwriting, claims administration and investments.”<sup>5</sup>

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to the Office of Insurance Regulation (OIR) for authority to transact insurance.<sup>6</sup> Reciprocal insurers may transact any kind of insurance other than life or title.<sup>7</sup>

##### Current Situation

Under Florida law, reciprocal insurers must have and maintain surplus funds of at least \$250,000 and an expendable surplus of at least \$750,000.<sup>8</sup> Currently, a reciprocal insurer can return to its subscribers any unused premiums, savings, or credits accruing to the subscribers’ accounts.<sup>9</sup> Any such distribution cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but such distribution may vary as to classes of subscribers based on the experience of such classes.<sup>10</sup> If a reciprocal insurer wants to make a distribution to its subscribers, it must establish and maintain subscriber savings accounts.<sup>11,12</sup>

In practice, not all domestic reciprocal insurers<sup>13</sup> maintain subscriber savings accounts; these accounts can be expensive for smaller-sized reciprocal insurers to maintain.<sup>14</sup> However, current Florida law does not provide a domestic reciprocal insurer who does not maintain subscriber savings accounts with explicit authority to return surplus to its subscribers.

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<sup>1</sup> See Kevin Moriarty, *Twenty Things You’d Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.

<sup>2</sup> ss. 629.011 and 629.021, F.S.

<sup>3</sup> See USAA, <https://www.usaa.com> (last visited Nov. 25, 2015).

<sup>4</sup> ss. 629.011 and 629.101, F.S.

<sup>5</sup> See Kevin Moriarty, *Twenty Things You’d Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.

<sup>6</sup> s. 629.081(1), F.S.

<sup>7</sup> s. 629.041(1), F.S.

<sup>8</sup> s. 629.071, F.S.

<sup>9</sup> s. 629.271, F.S.

<sup>10</sup> s. 629.271, F.S.

<sup>11</sup> E-mail from Caitlin Murray, Director of Government Affairs, Florida Office of Insurance Regulation, 699 (Nov. 30, 2015) (on file with the House Insurance & Banking Subcommittee).

<sup>12</sup> “Subscriber savings account” as used in this context refers to an accounting methodology and not to an account at a financial institution. Conversation with Lee Roddenberry, Galloway Brennan & Billmeier (Nov. 30, 2015).

<sup>13</sup> A domestic reciprocal insurer is a reciprocal insurer formed under Florida law. s. 624.06(1), F.S.

<sup>14</sup> Information obtained from Star & Shield Insurance Exchange, 11/24/15 (e-mail communication on file with the House Insurance & Banking Subcommittee).

## Effect of Bill

The bill adds a subsection to s. 629.271, F.S., providing a domestic reciprocal insurer with another method by which it can make distributions to its subscribers without the requirement to maintain subscriber savings accounts. The proposed language allows a domestic reciprocal insurer to pay to its subscribers up to ten percent of its unassigned funds (surplus), capping distribution at fifty percent of its net income from the previous calendar year. Such distribution would require written approval from the OIR and may not unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes.

The alternate method for distribution provided by this bill gives a domestic reciprocal insurer the option to return surplus funds to the subscribers without the administrative costs associated with subscriber savings accounts.<sup>15</sup>

This bill also makes technical changes to the language of s. 629.271, F.S.

### B. SECTION DIRECTORY:

**Section 1:** amends s. 629.271, F.S., relating to distribution of savings.

**Section 2:** provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that domestic reciprocal insurers who do not maintain subscriber savings accounts would now have the option to make distributions of surplus to its subscribers, there may be a positive economic impact on those subscribers.

### D. FISCAL COMMENTS:

None.

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<sup>15</sup> Information obtained from Star & Shield Insurance Exchange, 11/24/15 (e-mail communication on file with House Insurance & Banking Subcommittee).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



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27 | subscribers, but may vary as to classes of subscribers based on  
28 | the experience of the classes.

29 |       Section 2. This act shall take effect July 1, 2016.